

G.O.C. STAFF RULE ABSTRACT

AGENCY: Board of Athletic Trainers

SUBJECT: Athletic Trainers - Fees

STATUTORY AUTHORITY: Tennessee Code Annotated, Sections 63-24-106 and 63-24-111

EFFECTIVE DATES: June 21, 2016 through June 30, 2017

FISCAL IMPACT: None

STAFF RULE ABSTRACT: The rulemaking hearing rule will increase the biennial renewal fee by fifty-dollars (\$50.00). Licensees would be paying a total of two hundred dollars (\$200) to renew their licensure.

This rule appeared on the May 2016 Rule Review Agenda and was rolled to the June meeting.

Public Hearing Comments

One copy of a document containing responses to comments made at the public hearing must accompany the filing pursuant to T.C.A. § 4-5-222. Agencies shall include only their responses to public hearing comments, which can be summarized. No letters of inquiry from parties questioning the rule will be accepted. When no comments are received at the public hearing, the agency need only draft a memorandum stating such and include it with the Rulemaking Hearing Rule filing. Minutes of the meeting will not be accepted. Transcripts are not acceptable.

Board of Athletic Trainers Rulemaking Hearing - November 5, 2015 Public Comments

The first comment came from John "Clint Sanders", Communication Chair for Tennessee Athletic Trainers' Society and Secretary Elect for 2016, who asked the following, "unlike the renewal process, the initial licensure process can take from seven to twelve weeks, so will the fee increase help the administrative office speed up the initial licensure process?"

Dr. Alex Diamond responded for the Board and stated that the point is well taken, but while considering the expenses that the Board has to cover, the needs of the professionals regulated should be considered as well. Monroe Abrams, the Board Chair, also addressed Mr. Sanders' comments stating that the Board has to cover expenses incurred, and the money received from the increase will help to cover those expenses.

The second comment came from Chris Snoddy, with Star Physical Therapy who employs approximately forty athletic trainers. Mr. Snoddy acknowledged that the renewal process is efficient. Mr. Snoddy also acknowledged that the fee increase is approximately two (\$2.00) dollars per month. However, he stated that he does not support the fee increase unless the increase will ensure a quicker initial licensure process. He said that schools are going uncovered while waiting for athletic trainers to obtain initial licensure, and the delay is especially apparent during the summer months. He added that, according to the Korey Stringer Institute, the presence of an athletic trainer in a school helps prevent deaths related to athletic participation.

Walter Fitzpatrick responded for the Board and stated that the Board's administrative staff members should explain the initial application process to the Board members, should review the current process to determine if there are areas that need improvement, and if there are opportunities to streamline the initial application process, the administrative staff should implement those procedures.

Regulatory Flexibility Addendum

Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rule making process as described in T.C.A. § 4-5-202(a)(3) and T.C.A. § 4-5-202(a), all agencies shall conduct a review of whether a proposed rule or rule affects small businesses.

1. The extent to which the rule or rules may overlap, duplicate, or conflict with other federal, state, and local governmental rules.

These rules do not overlap, duplicate, or conflict with other federal, state, and local governmental rules.

2. Clarity, conciseness, and lack of ambiguity in the rule or rules.

These rules exhibit clarity, conciseness, and lack of ambiguity.

3. The establishment of flexible compliance and/or reporting requirements for small business.

The compliance requirements contained in the rules are the same for large or small businesses and are as flexible as possible while still allowing the Board to achieve its mandated mission of protecting the health, safety, and welfare of Tennesseans.

4. The establishment of friendly schedules or deadlines for compliance and/or reporting requirements for small businesses.

Compliance requirements contained in these proposed rule amendments are the same for large or small businesses.

5. The consolidation or simplification of compliance or reporting requirements for large or small businesses.

Compliance requirements contained in the rules are the same for large or small businesses.

6. The establishment of performance standards for small businesses as opposed to design or operational standards required in the proposed rules.

These rules do not establish performance, design, or operational standards.

7. The unnecessary creation of entry barriers or other effects that stifle entrepreneurial activity, curb innovation, or increase costs.

These rules do not create unnecessary barriers or stifle entrepreneurial activity or innovation.

STATEMENT OF ECONOMIC IMPACT TO SMALL BUSINESSES

Name of Board, Committee or Council: Board of Athletic Trainers

Rulemaking hearing date: November 5, 2015

1. **Type or types of small business and an identification and estimate of the number of small businesses subject to the proposed rule that would bear the cost of, and/or directly benefit from the proposed rule:**

Businesses and practitioners engaging in the practice of athletic training or wishing to offer athletic training services may be subject to these proposed rule amendments. These businesses and practitioners will bear the burden of the increased costs of the licensure renewal fees. These proposed rule amendments would affect approximately 800 licensees.

2. **Projected reporting, recordkeeping and other administrative costs required for compliance with the proposed rule, including the type of professional skills necessary for preparation of the report or record:**

Administrative costs associated with the fee increase should remain the same.

3. **Statement of the probable effect on impacted small businesses and consumers:**

Athletic trainers and the businesses that employ them may experience some negative impact due to the increase in renewal fees, but any negative impact should be minimal because the fee will only increase by fifty dollars (\$50.00), which only has to be paid once every two years.

4. **Description of any less burdensome, less intrusive or less costly alternative methods of achieving the purpose and/or objectives of the proposed rule that may exist, and to what extent, such alternative means might be less burdensome to small business:**

There are no less burdensome, less intrusive, or less costly alternative methods of achieving the purpose and/or objectives of these proposed rule amendments.

5. **Comparison of the proposed rule with any federal or state counterparts:**

Federal: none

State: Other health-related boards in Tennessee have renewal fees in the amount of two hundred dollars (\$200.00) or greater.

6. **Analysis of the effect of the possible exemption of small businesses from all or any part of the requirements contained in the proposed rule.**

These rule amendments will not provide exemptions for small businesses.

Impact on Local Governments

Pursuant to T.C.A. §§ 4-5-220 and 4-5-228 "any rule proposed to be promulgated shall state in a simple declarative sentence, without additional comments on the merits of the policy of the rules or regulation, whether the rule or regulation may have a projected impact on local governments." (See Public Chapter Number 1070 (<http://state.tn.us/sos/acts/106/pub/pc1070.pdf>) of the 2010 Session of the General Assembly)

The proposed rule amendments should not have a financial impact on local governments.

Additional Information Required by Joint Government Operations Committee

All agencies, upon filing a rule, must also submit the following pursuant to T.C.A. § 4-5-226(i)(1).

- (A) A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

Rule 0150-01-.06: This rule amendment would increase the biennial renewal fee fifty-dollars (\$50.00). Licensees would be paying a total of two hundred dollars to renew their licensure.

- (B) A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

None.

- (C) Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

This proposed rule amendment affects licensees who are licensed through the Tennessee Board of Athletic Trainers.

- (D) Identification of any opinions of the attorney general and reporter or any judicial ruling that directly relates to the rule;

None.

- (E) An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency's annual budget or five hundred thousand dollars (\$500,000), whichever is less;

These rules should not result in any increase or decrease in state or local government revenues or expenditures.

- (F) Identification of the appropriate agency representative or representatives, possessing substantial knowledge and understanding of the rule;

Paetria Morgan, Assistant General Counsel, Department of Health.

- (G) Identification of the appropriate agency representative or representatives who will explain the rule at a scheduled meeting of the committees;

Paetria Morgan, Assistant General Counsel, Department of Health.

- (H) Office address, telephone number, and email address of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

Office of General Counsel, 665 Mainstream Drive, Nashville, Tennessee 37243, (615) 741-1611, Paetria.Morgan@tn.gov.

- (I) Any additional information relevant to the rule proposed for continuation that the committee requests.

None.

Department of State**Division of Publications**

312 Rosa L. Parks Avenue, 8th Floor Snodgrass/TN Tower

Nashville, TN 37243

Phone: 615-741-2650

Email: publications.information@tn.gov**For Department of State Use Only**Sequence Number: 03-15-16Rule ID(s): 6148File Date: 3/23/16Effective Date: 6/21/16

Rulemaking Hearing Rule(s) Filing Form

Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing (Tenn. Code Ann. § 4-5-205).

Pursuant to Tenn. Code Ann. § 4-5-229, any new fee or fee increase promulgated by state agency rule shall take effect on July 1, following the expiration of the ninety (90) day period as provided in § 4-5-207. This section shall not apply to rules that implement new fees or fee increases that are promulgated as emergency rules pursuant to § 4-5-208(a) and to subsequent rules that make permanent such emergency rules, as amended during the rulemaking process. In addition, this section shall not apply to state agencies that did not, during the preceding two (2) fiscal years, collect fees in an amount sufficient to pay the cost of operating the board, commission or entity in accordance with § 4-29-121(b).

Agency/Board/Commission:	Board of Athletic Trainers
Division:	
Contact Person:	Paetria Morgan, Assistant General Counsel
Address:	665 Mainstream Drive, Nashville, Tennessee
Zip:	37243
Phone:	(615) 741-1611
Email:	Paetria.Morgan@tn.gov

Revision Type (check all that apply):

- ☒ Amendment
☐ New
☐ Repeal

Rule(s) Revised (ALL chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please enter only ONE Rule Number/Rule Title per row)

Chapter Number	Chapter Title
0150-01	General Rules and Regulations Governing the Practice of Athletic Trainers
Rule Number	Rule Title
0150-01-.06	Fees

GENERAL RULES AND REGULATIONS GOVERNING
THE PRACTICE OF ATHLETIC TRAINERS

CHAPTER 0150-01

(Rule 0150-01-.05, continued)

- (4) Application review and licensure decisions shall be governed by Rule 0150-01-.07.

Authority: T.C.A. §§4-3-1011, 4-5-202, 4-5-204, 63-1-101, 63-6-101, 63-24-102, 63-24-103, 63-24-104, 63-24-105, 63-24-106, and Public Chapter 694 of the Public Acts of 2000, Authority and Public Chapter 872 of the Public Acts of 2006. **Administrative History:** Original rule filed October 9, 1986; effective October 23, 1986. Amendment filed July 6, 1990; effective July 21, 1990. Repeal and new rule filed March 14, 2001; effective May 28, 2001. Amendment filed August 16, 2002; effective October 30, 2002. Amendment filed September 5, 2002; effective November 19, 2002. Amendments filed March 14, 2006; effective May 28, 2006. The Secretary of State transferred chapter 0880-04 to 0150-01, effective April 30, 2007.

0150-01-.06 FEES. All fees provided for in this rule are non-refundable.

- | | |
|--|---------------------|
| (1) Licensure application-examination fee to be submitted at the time of application | \$200.00 |
| (2) Biennial renewal fee to be submitted at the time of application | \$150.00 |
| (2) Biennial renewal fee to be submitted at the time of application | \$200.00 |
| (3) Late renewal fee | \$100.00 |
| (4) Licensure restoration fee | \$ 50.00 |
| (5) Duplication of license fee | \$ 5.00 |
| (6) Biennial state regulatory fee to be submitted at the time of application | \$ 10.00 |
| (7) All fees may be paid in person, by mail or electronically by cash, check, money order, or by credit and/or debit cards accepted by the Division. If the fees are paid by certified, personal or corporate check they must be drawn against an account in a United States Bank, and made payable to the Tennessee Board of Athletic Trainers. | |

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Authority: T.C.A. §§ ~~9-4-5117, 4-3-1011~~, 4-5-202, 4-5-204, 63-6-101, 63-24-102, 63-24-105, 63-24-106, 63-24-111, Public Chapter 389, Acts of 1989, and Public Chapter 694 of the Public Acts of 2000, Authority and Public Chapter 872 of the Public Acts of 2006. **Administrative History:** Original rule filed January 29, 1990; effective March 15, 1990. Repeal and new rule filed March 14, 2001; effective May 28, 2001. Amendment filed August 16, 2002; effective October 30, 2002. The Secretary of State transferred chapter 0880-04 to 0150-01, effective April 30, 2007. Amendment filed November 26, 2008; effective February 9, 2009. Amendment filed April 29, 2011; effective July 28, 2011.

0150-01-.07 APPLICATION REVIEW, APPROVAL, AND DENIAL.

- (1) Review of all applications to determine whether or not the application file is complete may be delegated to the Board's administrator.
- (2) A temporary authorization to practice, as described in T.C.A. § 63-1-142 may be issued to an applicant pursuant to an initial determination made by a Board designee who has reviewed the completed application and determined that the applicant has met all the requirements for licensure, renewal or reinstatement. The temporary authorization to practice is valid for a period of six (6) months from the date of issuance of the temporary authorization to practice and may not be extended or renewed. If the Board subsequently makes a good faith determination that the applicant has not met all the requirements for licensure, renewal or reinstatement and therefore denies, limits, conditions or restricts licensure, renewal or

* If a roll-call vote was necessary, the vote by the Agency on these rulemaking hearing rules was as follows:

Board Member	Aye	No	Abstain	Absent	Signature (if required)
Monroe J. Abram	X				
Craig Paul Moorhouse	X				
Walter S. Fitzpatrick, III	X				
Helen Binkley	X				
Alex B. Diamond, MD	X				

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Board of Athletic Trainers (board/commission/ other authority) on 11/16/2014, 05/07/2015 and 11/05/2015 (mm/dd/yyyy), and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 08/14/14, 01/06/15, and 06/08/15 (mm/dd/yy)

Rulemaking Hearing(s) Conducted on: (add more dates). 11/06/14, 05/07/15 and 11/05/15 (mm/dd/yy)

Date: 11/20/2015

Signature: Paetria Morgan

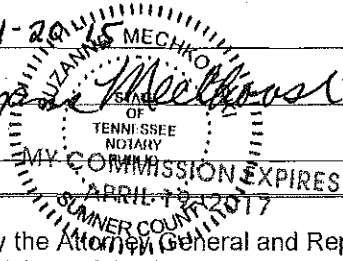
Name of Officer: Paetria Morgan
Assistant General Counsel

Title of Officer: Department of Health

Subscribed and sworn to before me on: _____

Notary Public Signature: _____

My commission expires on: _____



All rulemaking hearing rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.

Herbert H. Slatery III
Herbert H. Slatery III
Attorney General and Reporter

3/15/2016

Date

Department of State Use Only

Filed with the Department of State on: 3/23/16

Effective on: 6/21/16

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Tre Hargett
Secretary of State

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: Commerce and Insurance

DIVISION: Regulatory Boards

SUBJECT: Locksmith Licensing

STATUTORY AUTHORITY: Tennessee Code Annotated, Section 62-11-106

EFFECTIVE DATES: June 26, 2016 through June 30, 2017

FISCAL IMPACT: None

STAFF RULE ABSTRACT: According to the Department, the proposed rules amend several definitions within the licensing act, provide more efficient disclosure and renewal requirements for applicants, amend experience and education requirements, clarify and amend civil penalties, amend rules of conduct with regard to licensees, and allow for a more streamlined process to grant licensees reciprocity.

This rule appeared on the May 2016 Rule Review Agenda and was rolled to the June meeting.

Public Hearing Comments

One copy of a document containing responses to comments made at the public hearing must accompany the filing pursuant to T.C.A. § 4-5-222. Agencies shall include only their responses to public hearing comments, which can be summarized. No letters of inquiry from parties questioning the rule will be accepted. When no comments are received at the public hearing, the agency need only draft a memorandum stating such and include it with the Rulemaking Hearing Rule filing. Minutes of the meeting will not be accepted. Transcripts are not acceptable.

Comment as to 0780-5-13-.03: Stanley Harrell ("Mr. Harrell"): Tennessee Locksmith Licensing requirements place an undue and unfair burden on Mr. Harrell's offering of services to federal agencies that may be located in Tennessee.

Response: The proposed rules do not place an undue or unfair burden on applicants and/or licenses similarly situated to Mr. Harrell as the licensing requirements are evenly applied to protect the Tennessee consumer from deceptive and illegal practices.

Comment as to 0780-5-13-.03(5): Robert Wesson ("Mr. Wesson"): The probationary period that can be invoked, seems ambiguous.

Response: The probationary period of the proposed rule is drafted to comply with Tenn. Code Ann. § 62-11-104(m), which provides the Commission with discretion to invoke a probationary measures upon each applicant. The Commissioner determined not to place any mandatory probationary requirements on all applicants, but instead the rule as written sets forth specific probationary measures that the Commissioner may invoke upon an applicant, where such measures are determined necessary. The measures are not ambiguous in that any applicant placed on probation will be provided with its specific probationary requirements to abide by during its period of probation.

Comment as to 0780-5-13-.03(5)(a): Define "[a]nd other such requirements determined to be reasonably necessary.

Response: The Commissioner's responsibilities are established by Tenn. Code Ann. § 62-11-106 and the rules are drafted to comply with the enacted laws. There is no suitable static definition for "and other such requirements determined to be reasonably necessary." However, such requirements must be "reasonably necessary." As such, any further requirements may not be arbitrary or capricious must address a specific concern and be drafted to mitigate the risk to consumers for such concern in a reasonable manner so not to be overly burdensome to the applicant.

Comment as to 0780-5-13-.09(1) from Mr. Wesson: I believe the State should come up with the curriculum for this course [i.e. life safety], along with the State Fire Marshal and the NFP-100.

Response: The change in the proposed rule was drafted in order to comply with Tenn. Code Ann. § 62-11-106(7). As written, the rule allows for locksmith attendance to a variety of fire safety courses. To produce the curriculum for a fire safety course would create a greater financial burden than benefit to the locksmith licensing program.

Comment as to 0780-5-13-.11 from Mr. Wesson: why is there a minimum on the civil penalty?

Response: The proposed rule was amended to lower the minimum civil penalty to one dollar (\$1.00). The Commissioner is granted statutory authority to levy a civil penalty up to \$2,500 per violation. This rule as amended gives notice that the Commissioner may use discretion in the levying of civil penalties based upon the circumstances of the violation as set out in paragraph (4) of the rules.

Comment as to 0780-5-13-.15 from Mr. Wesson: The proposed rule regarding reciprocity should incorporate provisions to allow more locksmiths, certified outside of ALOA (Associated Locksmith of America).

Response: ALOA is the only national certification association in the United States. To include additional associations would create a greater financial burden than benefit to the locksmith licensing program.

Comment as to 0780-5-13-.09(8) from Mr. Wesson: The carryover provision was a good thing for locksmiths.

Response: The proposed rule was drafted in an effort to comply with Tenn. Code Ann. § 62-11-111(i).

Comment as to 0780-5-13-.09(8): Representative Jay Reedy, District 74, requested clarification on the carryover provision.

Response: There is no carryover at all from a previous renewal period to later renewal period.

Comment as to 0780-5-13-.02(1): Mr. Ron Harrison ("Mr. Harrison") requested clarification on "access control" with regards to the alarm industry exemption statute, as stated in Tenn. Code Ann. § 62-32-305(7).

Response: There is no exemption for locksmiths or general contractors within Tenn. Code Ann. § 62-32-305(7).

Comment as to 0780-5-13-.02(3): Mr. Harrison requested clarification as to the definition of "branch office."

Response: The definition of branch office, and its related exception, is clearly defined in the rule.

Comment as to 0780-5-13-.02(19): Mr. Harrison requested clarification on the definition of "qualifying agent."

Response: A qualifying agent is clearly defined in the rule. The qualifying agent is required to qualify the company license; however, a company can have multiple branch offices with a licensed locksmith and the offices can have the same qualifying agent.

Comment as to 0780-5-13-.09: Mr. Harrison requested clarification on the carryover provision of the continuing education requirements and believes allowing a certain amount of continuing education hours is beneficial.

Response: The proposed rule regarding the continuing education's carry over provision is clearly defined and does not allow the carryover of continuing education hours.

Comment: Melissa Bass, Representative for the Tennessee Organization of Locksmiths, commended the staff of the Tennessee Locksmith Licensing Program on the proposed rules and subsequent rulemaking hearing.

Response: Ms. Bass' comments are acknowledged.

Regulatory Flexibility Addendum

Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rule making process as described in T.C.A. § 4-5-202(a)(3) and T.C.A. § 4-5-202(a), all agencies shall conduct a review of whether a proposed rule or rule affects small businesses.

1. The type or types of small business and an identification and estimate of the number of small businesses subject to the proposed rule that would bear the cost of, or directly benefit from the proposed rule:

Answer: This rule would affect any locksmith licensees and locksmith apprentices as well as all future applicants. There are currently 370 locksmith licensee and 285 locksmith apprentices.

2. The projected reporting, recordkeeping and other administrative costs required for compliance with the proposed rule, including the type of professional skills necessary for preparation of the report or record:

Answer: The proposed rules create a more efficient, concise, and streamlined process for locksmith applicants and licensees. The proposed rules provide clarity in its application guidelines as well as renewal and continual maintenance procedures. The administrative skills and/or costs required for compliance with the proposed rules would not exceed those required for existing rules.

3. A statement of the probable effect on impacted small businesses and consumers:

Answer: These rules will have no effect on consumers. Minimally, small businesses can expect the proposed rules to effect, specifically, the continuing education requirement of the Locksmith Licensing Program and may result in higher costs to locksmith licensees.

4. A description of any less burdensome, less intrusive or less costly alternative methods of achieving the purpose and objectives of the proposed rule that may exist, and to what extent the alternative means might be less burdensome to small business:

Answer: The proposed changes to the existing rules are minimally burdensome/intrusive to small businesses.

5. A comparison of the proposed rule with any federal or state counterparts:

Answer: There are no federal or state counterparts to the issues addressed by these rules.

6. Analysis of the effect of the possible exemption of small businesses from all or any part of the requirements contained in the proposed rule:

Answer: An exemption of small businesses from the aforementioned requirements would create an increased cost to each individual applicant and create an additional administrative process upon the agency, decreasing its standardization and efficiency in processing applications.

Impact on Local Governments

Pursuant to T.C.A. §§ 4-5-220 and 4-5-228 "any rule proposed to be promulgated shall state in a simple declarative sentence, without additional comments on the merits of the policy of the rules or regulation, whether the rule or regulation may have a projected impact on local governments." (See Public Chapter Number 1070 (<http://state.tn.us/sos/acts/106/pub/pc1070.pdf>) of the 2010 Session of the General Assembly)

There is no expected impact on local government by the promulgation of this amendment.

Additional Information Required by Joint Government Operations Committee

All agencies, upon filing a rule, must also submit the following pursuant to T.C.A. § 4-5-226(i)(1).

- (A) A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

The proposed rules amend several definitions used within the licensing act, provides more efficient disclosure and renewal requirements for applicants, amends experience and education requirements, clarifies and amends civil penalties, amends rules of conduct with regards to identification of licensees, and allows for a more streamlined process to grant licensees reciprocity

- (B) A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

There are no known state or federal regulations mandating promulgation of such rule or establishing guidelines relevant thereto.

- (C) Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

All current locksmith and locksmith apprentice licensees and future applicants will be affected by these amendments. The Department urges adoption of these rules; several members at the rulemaking hearing rejected the changes to the continuing education rules.

- (D) Identification of any opinions of the attorney general and reporter or any judicial ruling that directly relates to the rule;

There is no known opinion of the attorney general and reporter or any judicial ruling that directly relates to this rule.

- (E) An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency's annual budget or five hundred thousand dollars (\$500,000), whichever is less;

The promulgation of these rules are not estimated to result in an increase or decrease in state and local government revenues and expenditures of two percent (2%) or greater or five hundred thousand dollars (\$500,000)

- (F) Identification of the appropriate agency representative or representatives, possessing substantial knowledge and understanding of the rule;

Ashley N. Thomas
Assistant General Counsel
Division of Regulatory Boards
Department of Commerce and Insurance

Cody Vest
Executive Director – Private Protective Services
Division of Regulatory Boards
Department of Commerce and Insurance

- (G) Identification of the appropriate agency representative or representatives who will explain the rule at a scheduled meeting of the committees;

Ashley N. Thomas
Assistant General Counsel
Division of Regulatory Boards
Department of Commerce and Insurance

Cody Vest
Executive Director – Private Protective Services
Division of Regulatory Boards
Department of Commerce and Insurance

- (H) Office address, telephone number, and email address of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

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615-253-3703
Cody.vest@tn.gov

- (I) Any additional information relevant to the rule proposed for continuation that the committee requests.

No additional information requested.

**Department of State
Division of Publications**

312 Rosa L. Parks Avenue, 8th Floor Snodgrass/TN Tower
Nashville, TN 37243
Phone: 615-741-2650
Email: publications.information@tn.gov

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Sequence Number: 03-21-16

Rule ID(s): 6160

File Date: 3/28/16

Effective Date: 6/26/16

Rulemaking Hearing Rule(s) Filing Form

Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing (Tenn. Code Ann. § 4-5-205).

Pursuant to Tenn. Code Ann. § 4-5-229, any new fee or fee increase promulgated by state agency rule shall take effect on July 1, following the expiration of the ninety (90) day period as provided in § 4-5-207. This section shall not apply to rules that implement new fees or fee increases that are promulgated as emergency rules pursuant to § 4-5-208(a) and to subsequent rules that make permanent such emergency rules, as amended during the rulemaking process. In addition, this section shall not apply to state agencies that did not, during the preceding two (2) fiscal years, collect fees in an amount sufficient to pay the cost of operating the board, commission or entity in accordance with § 4-29-121(b).

Agency/Board/Commission:	Tennessee Locksmith Licensing Program
Division:	Department of Commerce and Insurance, Division of Regulatory Boards
Contact Person:	Ashley N. Thomas, Assistant General Counsel
Address:	500 James Robertson Parkway, Nashville, Tennessee
Zip:	37243
Phone:	(615) 741-3072
Email:	ashley.thomas@tn.gov

Revision Type (check all that apply):

- ☒ Amendment
☒ New
☐ Repeal

Rule(s) Revised (ALL chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please enter only ONE Rule Number/Rule Title per row)

Chapter Number	Chapter Title
0780-05-13	Locksmiths
Rule Number	Rule Title
0780-05-13-.02	Definitions
0780-05-13-.03	Application for License or Registration
0780-05-13-.04	Application Requirements
0780-05-13-.05	Renewal of Licenses and Registrations
0780-05-13-.08	Experience
0780-05-13-.09	Continuing Education and Programs
0780-05-13-.10	Qualifying and Continuing Education Providers
0780-05-13-.11	Civil Penalties
0780-05-13-.12	Submission of Information
0780-05-13-.14	Code of Conduct
0780-05-13-.16	Reciprocity

(Place substance of rules and other info here. Statutory authority must be given for each rule change. For information on formatting rules go to <http://state.tn.us/sos/rules/1360/1360.htm>)

Chapter 0780-05-13
Locksmiths
Repeal/New

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0780-05-13-.04	Application Requirements	0780-05-13-.14	Code of Conduct
0780-05-13-.05	Renewal of Licenses and Registrations	0780-05-13-.16	Reciprocity
0780-05-13-.08	Experience		
0780-05-13-.09	Continuing Education and Programs		
0780-05-13-.10	Qualifying and Continuing Education Providers		

0780-05-13-.02 Definitions.

- (1) ~~"Access control" means mechanical locks that have an integral alarm as part of their design without electrical components and electro-mechanical locks such as self-contained, low voltage exit alarm devices that secure a single entry point, which are not part of an integrated system. Nothing in these rules shall exempt any locksmith from complying with the Alarm Contractors Licensing Law and Rules;~~
- (1) "Access control" means any barrier or device, which limits or prohibits free or unlimited access; however, for the purpose of this chapter, "access control" may mean any "stand-alone" mechanical, electro-mechanical, or electronic locking device that is not part of an integrated system. Nothing in this chapter shall exempt any licensed locksmith from complying with all licensing requirements for alarm contracting;
- (2) "Automotive work" means repairing, rebuilding, repinning, recombining, servicing, adjusting, installing, manipulating, or bypassing a special locking system, mechanical locking device or electrical locking device for controlled access to vehicles;
- (3) ~~"Branch office" means any office of a locksmith company within this state other than its principal place of business within this state; physical location that is not the primary place of business at which a locksmith or apprentice conducts any activity relative to locksmithing services, including but not limited to offices where administrative and/or other locksmith business function is performed. The only exceptions are warehouse facilities which are utilized solely for storage purposes and locations that are not accessible to the general public which have no signage, advertising or other outward indication to the public that the licensing locksmith company conducts its primary business at that location.~~
- (4) "Commissioner" means the commissioner of commerce and insurance;
- (5) "Continuing education" means education that is creditable toward the education requirements that must be satisfied as a prerequisite for renewal or a license as a locksmith;
- (6) "Conviction" means and includes the entry of a plea of guilty, plea of no contest or a verdict rendered in open court by a judge or jury;
- (7) "General locksmithing" means repairing, rebuilding, repinning, recombining, servicing, adjusting, installing, manipulating, or bypassing locks or other devices for access to structures or personal property;

- (8) "Good moral character" means an individual with high legal, moral and ethical values, and the following shall be prima facie evidence that an individual does not have good moral character:
- (a) Conviction by any local, state, federal or military court of any crime involving the illegal sale, manufacture, distribution or transportation of a controlled substance, drug, or narcotic;
 - (b) Conviction of a crime involving felonious assault;
 - (c) Conviction of a crime involving unlawful breaking or entering, burglary, larceny or arson;
 - (d) Conviction as a habitual criminal;
 - (e) An addiction to alcohol or a narcotic drug;
 - (f) Discharge from the armed forces under dishonorable conditions; or
 - (g) Conviction of a misdemeanor crime of domestic violence as defined in 18 U.S.C. 921(33);
- (9) "Instructor" means an individual who presents course materials approved for qualifying education and continuing education credit hours ~~that has the necessary experience, training or education in the course subject matter and has been approved by the Commissioner;~~
- (10) "Licensee" means an individual who holds a current, unexpired license as a locksmith issued by the commissioner;
- (11) "Locksmith company" means any person or entity engaging in the business of providing or undertaking to provide locksmithing services for another person;
- (12) "Locksmith student" means an individual who is enrolled in a locksmith training program pursuant to Rule 0780-05-13-.07;
- (13) "Locksmith training program" means a course or courses or an apprenticeship program given in preparation for licensure as a locksmith;
- ~~(14)~~ "Master key system" means any keying arrangement which has two or more levels of keying;
- ~~(14)(15)~~ "Motor vehicle" shall have the same meaning as set forth in ~~Tenn. Code Ann~~ T.C.A. § 55-17-102(15);
- ~~(15)(16)~~ "Provider" means an individual or entity offering courses approved by the commissioner for qualifying education or continuing education credit hours;
- ~~(17)~~ "Permanent, fixed business location" means an office, office building or dwelling submitted to the commissioner as the locksmith company's principal place of business. Mail boxes and mail drop addresses may not be used as a primary place of business or as a branch office.
- ~~(16)(18)~~ "Person" means an individual, firm, association, governmental entity, or other legal entity;
- ~~(17)(19)~~ "Qualifying agent" means any person licensed by the commissioner as a locksmith who is immediately responsible for the operation of a principal office or any branch office;
- ~~(18)(20)~~ "Qualifying education" means education that is creditable toward the education requirements for initial licensure as a locksmith;
- ~~(19)(21)~~ "Registrant" means an individual who holds a current, unexpired registration as a locksmith apprentice issued by the commissioner or a company that holds a current, unexpired registration as a locksmith company issued by the commissioner;
- ~~(20)(22)~~ "Safe and vault work" means repairing, rebuilding, repinning, recombining, servicing, adjusting, installing, manipulating, or bypassing a special locking system, mechanical locking device or

electrical locking device for controlled access or egress to safes, vaults, safe doors, lock boxes, automatic teller machines, or other devices for safeguarding areas;

~~(24)~~(23) "Structure" means any building or improvement and its components, systems, fixtures and appurtenances;

~~(24)~~ "Timely renewal" means that all documentation and fees required for the renewal have been received by the commissioner prior to the expiration of the locksmith license or registration.

Authority: T.C.A. § 62-11-106.

0780-05-13-.03 Application for License or Registration.

(1) Any person who seeks to be licensed as a locksmith in any category, registered as an apprentice locksmith, or registered as a locksmith company shall complete an application on a form prescribed by the Commissioner and submit the completed application to the Commissioner. Such applications for licensure or registration are available upon request from the Commissioner. All fees associated with initial licensure and subsequent renewals are non-refundable.

~~(2)~~ Applications for licensure or registration are available upon request from the Commissioner.

~~(3)~~(2) All applications for licensure or registration shall be submitted on the form prescribed by the commissioner for this purpose and shall be accompanied by the following supporting documents:

(a) A copy of at least one (1) of the following valid forms of identification:

1. A driver's license or non-driver's I.D. issued by the State Department of Motor Vehicles; or
2. A valid passport; or
3. A resident alien card; or
4. A license or permit issued by a government agency; or
5. If the applicant is a city, state, or federal employee, an employee identification card.

~~(b)~~ Two ~~(2)~~ completed fingerprint cards or a copy of the receipt for electronically scanned prints. Fingerprints must be rolled nail to nail by a qualified, trained technician on the fingerprint cards provided by this office. The cards must be fully completed and signed and all questions in the blocks at the top of the card must be answered.

(c) Any applicant disclosing any citations, arrests, convictions, or any other documented activity associated with criminal behavior, whether involving a military crime or a state or federal misdemeanor or felony, must provide a written explanation of the episode, and any associated documentation in support thereof. Failure to provide this written information will result in an incomplete application and will cause the application to not be processed.

~~(e)~~(d) Two (2) color frontal photographs of the applicant's face taken within the preceding three (3) months, the size of which must be one (1) inch by one (1) inch and must include the applicant's name and the last four (4) digits of the applicant's social security number on the back of each photograph.

~~(d)~~(e) All applications for a locksmith company registration shall also include the following:

4. ~~The name, date of birth, residence, present and previous occupations of the qualifying agent and each member, officer or director of the business firm;~~

1. The address of the permanent, fixed principal place of business location of the firm and location of all branch offices as well as the qualifying agent licensed locksmith for each branch office, if applicable. A mail drop box address is not acceptable as a physical location for any kind of office;
 2. The address of the principal place of business of the firm and the location of all branch offices as well as the qualifying agent for each branch office, if applicable;
 3. 2. Evidence of general liability insurance and insurance coverage as set forth in Tenn. Code Ann T.C.A. § 62-11-108; and
 4. 3. A payment in the amount of the application fee as set forth in Rule 0780-05-13.06.
 4. Copies of a locksmith company's current business license(s) in all applicable city and county jurisdictions within Tennessee.
- (f) Applicants for licensure or registration under this chapter shall be of good moral character as defined by Rule 0780-05-13-.02(8).
- (4)(3) Any application submitted which lacks required information or reflects a failure to meet any requirement for licensure or registration will be held by the program office with written notification that the information is lacking or the reason(s) the application does not meet the requirements for licensure sent to the applicant. The application will be held in "pending" status until satisfactorily completed within a reasonable period of time, not to exceed sixty (60) ninety (90) days from the date of application. If the applicant fails to respond to the written notification, the application will be closed and the applicant must reapply.
- (5)(4) Any application submitted may be withdrawn; provided, however, that the application fee will not be refunded; all fees associated with the application and initial licensure are nonrefundable.
- (5) Any partnership, association, company or corporation seeking initial registration as a locksmith business shall be placed on probationary licensure status for a period of two (2) years from the date of the issuance of the registration.
- (a) Such probationary status may include such reasonable terms and conditions for the issuance and maintenance of a locksmith business registration as the commissioner determines to be reasonably necessary. Such probationary requirements may include, but are not limited to:
1. Acquiring a bond in an amount determined to be necessary by the commissioner for the protection of the public;
 2. Providing reports to the commissioner regarding the company's activities as a locksmith company; or
 3. Such other requirements determined to be reasonably necessary by the commissioner.
- (b) A licensee's probationary status may be considered by the commissioner in the assessment of discipline for any acts, conduct, or other disciplinary violations occurring during the probationary period.
- (c) No locksmith business registrant shall violate the terms and conditions of its probation.

Authority: T.C.A. §§ 62-11-106, -106, -111, and -112.

0780-05-13-.04 Application Requirements.

- (1) ~~Beginning immediately upon the effective date of these rules, and continuing until July 1, 2008, any~~ Any person who desires to obtain a license as a locksmith in any category or a registration as a locksmith company shall submit an application to the Commissioner, along with the required application and license fee, provided that the applicant meets the requirements set forth in ~~Tenn. Code Ann T.C.A~~ §§ 62-11-111(a) and (b) and demonstrates to the satisfaction of the Commissioner not less than two (2) years' experience in the locksmithing business, or an equivalent amount of certified education or apprenticeship.
- (2) ~~Beginning July 1, 2008, any~~ Any person who desires to obtain a license as a locksmith in any category, a registration as an apprentice locksmith, or a registration as a locksmith company shall submit an application to the Commissioner, along with the required application and license fee and shall comply with ~~Tenn. Code Ann T.C.A.~~ §§ 62-11-111 or 62-11-112.
- (3) Applications will not be considered filed complete until the applicable fee prescribed in these rules is received.

Authority: T.C.A. §§ 62-11-106, -111, and -112.

0780-05-13-.05 Renewal of Licenses and Registrations.

- (1) Licenses and certificates of registration shall expire on the last day of the twenty-fourth (24th) month following their issuance or renewal, and shall become invalid on such date unless renewed.
- (2) Renewal must be received in the office of the Commissioner not less than thirty (30) days nor more than sixty (60) days prior to the expiration of a license or certificate.
- (3) Licenses and registrations granted shall be staggered in accordance with ~~Tenn. Code Ann T.C.A.~~ § 56-1-302(b).
- (4) An individual or company choosing not to renew his, her or its license or registration shall notify the Commissioner of his, her or its intention prior to the expiration of that license or registration, and shall surrender the license or registration to the Commissioner immediately upon its expiration.
- (5) Applications for renewal of licenses and registrations pursuant to the Act shall be made on a form provided by the Commissioner. Applications for renewals will not be considered filed complete until the applicable fee and documentation prescribed in these rules is are received.
- (6) Any locksmith licensee or registrant who does not submit all required documentation and fees within ninety (90) days of the expiration date of the license or registration must reapply.
- (7) A late fee will be assessed on any incomplete renewal application which is not completed prior to the expiration of the current license or registration.

Authority: T.C.A. §§ 62-11-106, -111, and -112.

0780-05-13-.08 Experience.

- (1) An applicant seeking licensure as a locksmith under any the general locksmithing category shall demonstrate to the satisfaction of the Commissioner not less than two (2) years' experience in the locksmithing business, or an equivalent amount of apprenticeship, as permitted under T.C.A § 62-11-112. ~~obtain forty (40) hours of verifiable experience prior to submitting an application for licensure.~~
- (2) ~~An applicant seeking licensure as a locksmith under the safe and vault category shall obtain ten (10) hours of experience prior to submitting an application for licensure.~~

- ~~(3) An applicant seeking licensure as a locksmith under the automotive work category shall obtain ten (10) hours of experience prior to submitting~~
- (4) Prior to July 1, 2008, the Commissioner shall allow the applicant to submit proof of the required two (2) years experience by providing at least two (2) of the following:
- (a) Business license;
 - (b) Federal tax ID;
 - (c) Sales tax receipt; and
 - (d) Letter from employer on employer's letterhead stating the applicant's experience.

Authority: T.C.A. § 62-11-106.

0780-05-13-.09 Continuing Education and Programs

- (1) Continuing Education Credits.
- ~~(a) As a prerequisite to renewal, a licensee shall obtain twelve (12) hours of continuing education for each biennial renewal period.~~
 - ~~(b) A licensee who completes more than twelve (12) hours of continuing education credits in a biennial renewal period may carry over a maximum of four (4) hours into the next renewal period.~~
 - ~~(c) A licensee shall obtain continuing education credits from any of the following sources:~~
 - ~~1. Successful completion of a continuing education course or program approved by the Commissioner;~~
 - ~~2. Participation in developing curriculum for a qualifying or continuing education course or program;~~
 - ~~3. Teaching a qualifying or continuing education course or program, limited to six (6) hours per biennial renewal period;~~
 - ~~4. Authorship of a textbook or manual directly related to locksmithing services, limited to six (6) hours per biennial renewal period; or~~
 - ~~5. Authorship of a published article related to locksmithing services, limited to four (4) hours per article and two (2) articles per biennial renewal period.~~
 - ~~(d) The Commissioner may waive the continuing education requirements upon request by the licensee by showing good cause for the waiver, including but not limited to reasons such as illness, disability, or military service.~~
 - ~~(e) The licensee seeking a waiver of continuing education requirements shall request the waiver in writing to the Commissioner at least ninety (90) days prior to the licensee's renewal date.~~
- (2) Exemption to continuing education requirements for one (1) twelve (12) month period per renewal cycle may be granted if applied for in writing on the form prescribed by the Commissioner for this purpose for the following reasons:
- (a) A licensee serving on temporary active duty in the armed forces of the United States for a period exceeding one hundred twenty (120) consecutive days within the year.

- (b) ~~A licensee experiencing physical disability or illness if supporting documents are submitted to and approved by the Commissioner. Such documentation shall be in the form of a statement from a physician or medical records which show that the disability or illness prevented the licensee's participating in a course in which the licensee has enrolled or prevented the licensee's participation in the continuing education program for at least one hundred twenty (120) consecutive days in a year.~~
- (1) As a prerequisite to renewal, a licensee shall obtain twelve (12) hours of continuing education for each biennial renewal period, two (2) of which shall be dedicated to life safety.
- (2) In order to qualify for credit toward satisfaction of the continuing professional education requirements of T.C.A. § 62-11-106(7), the continuing education program must be a formal program of learning which contributes directly to the professional competence of the licensee.
- (3) Formal programs requiring attendance may only be considered if:
- (a) an outline is prepared and preserved;
- (b) the unit program is at least one (1) hour (1 credit hour = 50 minutes) in length;
- (c) the program is conducted by a qualified instructor or lecturer; and
- (d) a record of registration and attendance is maintained and certified by the signatures of an authorized representative of the organization sponsoring the program.
- (4) Subject to compliance with paragraphs 1 and 2 of this rule, the following are deemed to be qualifying programs:
- (a) University or college courses provided that:
1. successful completion of a semester or quarter length course will satisfy the continuing professional education requirement for the year in which it is taken; and
2. the courses are relevant to the locksmith industry.
- (b) Programs of locksmith associations and organizations recognized by the Commissioner.
- (c) Formal correspondence and other individual study programs which require registration and provide evidence of satisfactory completion may qualify for continuing education credit in an amount to be determined by the Commissioner.
- (5) Continuing education credit will be allowed for service as an instructor or speaker at any program for which participants are eligible to receive continuing education credit. Credit for such service shall be allowed on the first presentation only, unless the program has been substantially revised. One (1) hour of instruction will equal one (1) hour of continuing education.
- (6) Any program of continuing education not specifically mentioned by this rule may be submitted to the Commissioner for evaluation and approval.
- (7) The Commissioner specifically reserves the right to approve or disapprove credit for continuing education claimed under this rule.
- (8) Each attendee shall be provided a certificate of completion to be submitted with their renewal application.
- (9) No carryover of hours from renewal period to the next renewal period is permitted.

- (10) The Commissioner may, upon written request, extend the time within which a licensee must comply with the requirements of this chapter for reasons of poor health, military service, or other reasonable and just causes.
- (11) Any licensee who requests and is granted an extension of time under this rule shall remain subject to the provisions of this chapter and shall note such extension on any report or correspondence thereafter submitted until such time as the extension and reason for it are no longer pertinent.
- (12) Each extension of time granted by the Commissioner shall be reviewed every six (6) months for the purpose of determining whether good cause exists to continue such extension.

Authority: T.C.A. §§ 62-11-106 and -111.

0780-05-13-.10 Qualifying and Continuing Education Providers.

- (1) Course approval requirements.
 - (a) Any person or entity seeking to conduct an approved course for qualifying or continuing education credits shall make application on a form prescribed by the Commissioner and submit to the Commissioner any documents, statements and forms as the Commissioner may require. The complete application shall be submitted to the Commissioner no later than thirty (30) days prior to the scheduled date of the course. At a minimum, a person or entity seeking approval to conduct a course for qualifying or continuing education shall provide:
 - 1. Name and address of the provider;
 - 2. Contact person and his or her address, telephone number, fax number and e-mail address;
 - 3. The location of the courses or programs;
 - 4. The number and type of education credit hours requested for each course;
 - 5. Topic outlines that list the summarized topics covered in each course and, upon request, a copy of any course materials;
 - 6. If a prior approved course has substantially changed, a summarization of the changes; and
 - 7. The names and qualifications of each instructor who is qualified in accordance with paragraph (2) of this rule.
 - (b) Acceptable topics include, but are not limited to:
 - 1. Life Safety Codes;
 - 2. Building Codes;
 - 3. Americans with Disabilities Act;
 - 4. Master Keying;
 - 5. Key Records and Codes;
 - 6. Key Blanks and Keyways;
 - 7. Product Liability;

8. Professional Installations; and
 9. Tennessee locksmith laws and rules.
- (c) The Commissioner may withhold or withdraw approval of any provider for violation of or failure to comply with any provision of this rule. Such withholding or withdrawal does not constitute a contested case proceeding pursuant to the Uniform Administrative Procedures Act compiled at ~~Tenn. Code Ann~~ T.C.A. Title 4, Chapter 5.
 - (d) No person or entity sponsoring or conducting a course shall advertise that it is endorsed, recommended, or accredited by the Commissioner. Such person or entity may indicate that the Commissioner has approved a course of study if that course of study has been pre-approved by the Commissioner before it is advertised or held.
 - (e) ~~Within five (5) working days after the completion of each course, the provider shall submit to the Commissioner a list of all attendees, including, if applicable, the attendees' license numbers, who completed the course on the course completion form approved by the Commissioner. If the course is for qualifying or continuing education, each licensee successfully completing the course shall be furnished a certificate of completion.~~
 - (f) Providers shall maintain course records for at least five (5) years. The Commissioner may at any time examine such records to ensure compliance with this rule.
- ~~(2) Instructor qualifications and requirements. A person seeking approval as an instructor shall submit an application on a form prescribed by the Commissioner. If granted, the approval as an instructor shall be valid for a period of two (2) years from the date of the approval.~~
- ~~(a) An instructor shall have one of the following qualifications:~~
 - ~~1. Three (3) years of recent experience in the subject matter being taught; or~~
 - ~~2. A minimum of an associates degree in the subject area being taught; or~~
 - ~~3. Two (2) years of recent experience in the subject area being taught and twelve (12) hours of college credit and/or vocational technical school technical credit hours in the subject being taught; or~~
 - ~~4. Other educational, teaching or professional qualifications determined by the Commissioner which constitute an equivalent to one (1) or more of the qualifications in parts (2)(a)1., 2., and 3., of this rule.~~
 - ~~(b) In order to maintain approved status, an instructor shall furnish evidence on a form approved by the Commissioner that the instructor has taught a Commissioner-approved course, or any other course for qualifying or continuing education credit that the Commissioner determines to be equivalent, within the preceding two (2) year period. Any instructor who does not meet the requirements of this subparagraph (2)(b) shall be required to submit a new application in accordance with subparagraph (2)(a) above.~~
 - ~~(c) All instructors shall furnish a log, on a form prescribed by the Commissioner, of all continuing education classes taught during the previous license period, a list of the names of the students enrolled in the classes, the dates, the number of hours, and a brief description of the subject matter included in the course or program.~~
- ~~(2) Continuing education providers.~~
- (a) The provider of any continuing education program must seek approval of such program by registering with the Commissioner in the prescribed form at least 30 days prior to the program being offered for continuing professional education credit. Such form shall include certification that the program sponsored will conform to the provisions of this

chapter. If the course is for continuing education, each licensee successfully completing the course shall be furnished a certificate of completion.

(b) The provider of each continuing education program shall keep detailed records, including:

1. the date and location of the program presentation;
2. the names of each instructor and their qualifications in resume format;
3. a list of licensees attending each program presentation, and
4. a written outline of the program agenda.

(c) The records required by paragraph 2 of this rule shall be maintained for a period of five (5) years following the date of each program presentation.

(d) The provider of any continuing education program approved by the Commissioner may advise attendees of such approval and the number of continuing hours allowed.

(3) If a licensee who is not a resident of Tennessee satisfies a continuing education requirement for renewal of a license as a locksmith in the licensee's resident state, the licensee will be deemed to have met the continuing education requirement for Tennessee; provided, the continuing education requirements in the licensee's resident state are at least equivalent to the continuing education requirements in Tennessee. In order for the licensee to be deemed to have met the requirement, the licensee must file with the license renewal a certificate from the licensee's resident state certifying that the licensee has completed the continuing education requirement for licensure in that state. The certificate from the licensee's resident state verifying compliance with continuing education in the resident state must be received by the Commissioner no later than thirty (30) days prior to the expiration date of the license.

(3) Withdrawal of program approval.

Approval of any program may be withdrawn by the Commissioner if:

- (a) The establishment or conduct of a program violates, or fails to meet the requirements of, the provisions of this chapter or other applicable law;
- (b) The information contained in the application for approval is materially inaccurate or misleading;
- (c) The provider, an instructor, or any representative of the provider disseminates false or misleading information concerning any program;
- (d) The performance of the instructor is so deficient as to impair significantly the value of the program; provided, however, that the instructor shall receive adequate notice of the discovered deficiency and the opportunity to demonstrate satisfactory correction thereof.

(4) Continuing education control and reporting system.

- (a) Each approved provider shall submit to the Commissioner, in approved form, within fifteen (15) days of the completion of their program, a list of the names of each licensee in attendance, their respective license numbers and the number of hours each attended.
- (b) It shall be the responsibility of each licensee to provide his name and license number to the provider at the time of registration for any Commissioner-approved continuing professional education program.

Authority: T.C.A. § 62-11-106.

0780-05-13-.11 Civil Penalties.

- (1) With respect to any licensed locksmith, registered apprentice locksmith, or registered locksmith company, the commissioner may, in addition to or in lieu of any other lawful disciplinary action, assess a civil penalty against such licensee or registrant for each separate violation of a statute, rule or commissioner's order pertaining to locksmiths and apprentice locksmiths, in accordance with the following schedule:

Violation	Penalty
(a) Tenn. Code Ann T.C.A. § 62-11-109	\$100 - \$5,000 <u>\$1 - \$2,500</u>
(b) Rule 0780-5-13-.12	\$100 - \$5,000
(b) Any rule in this Chapter	\$1 - \$2,500
(c) Rule 0780-5-13-.13	\$100 - \$5,000
(d) Rule 0780-5-13-.14	\$100 - \$5,000
(e)(c) Commissioner's order	\$100 - \$5,000 <u>\$1 - \$2,500</u>

- (2) With respect to any person required to be licensed in this state as a locksmith or registered as an apprentice locksmith or locksmith company, the commissioner may assess a civil penalty against such person for each separate violation of a statute in accordance with the following schedule:

Violation	Penalty
Tenn. Code Ann T.C.A. § 62-11-104	\$100 - \$5,000 <u>\$1 - \$2,500</u>

- (3) Each day of continued violation may constitute a separate violation.
- (4) In determining the amount of any penalty to be assessed pursuant to this Rule, the commissioner may consider such factors as the following:
- (a) Whether the amount imposed will be a substantial economic deterrent to the violator;
 - (b) The circumstances leading to the violation;
 - (c) The severity of the violation and risk of harm to the public;
 - (d) The economic benefits gained by the violator as a result of noncompliance;
 - (e) The interest of the public, and
 - (f) Willfulness of the violation.

Authority: T.C.A. §§ 62-11-106 and 62-11-110.

0780-05-13-.12 Submission of Information.

- (2) A licensee or registrant shall inform the commissioner in writing of any change in residential or business mailing or physical address within thirty (30) days of such change.
- (3) A qualifying agent on behalf of the locksmith company or a licensee shall inform the commissioner in writing of any change in his or her locksmithing business name, change in the business structure including a change in qualifying agent status, or opening of a branch office within thirty (30) days before the change occurs or as soon as practicable. Locksmith company registrations and licenses are non-transferable.
- (4) A licensee or registrant shall submit a Transfer Notice on the form prescribed by the Commissioner containing the name of the current or previous employer and the name of the current or prospective employer along with two (2) color passport-style photos, identification card fee, and the Transfer Fee within ten (10) days of obtaining employment with another locksmithing company.

- (a) In the case of a termination, the locksmith shall not engage in any locksmithing activity that requires a license under T.C.A. § 62-11-104 without either first submitting a Transfer Notice or obtaining a new company registration.
- ~~(5) A licensee or registrant shall inform the Commissioner in writing if he/she has had his/her license or registration disciplined in another state within thirty (30) days after the licensee or registrant was disciplined.~~
- (5) A locksmith company shall submit a Termination Notice on the form prescribed by the Commissioner within ten (10) days of the termination, end of employment, or other separation from a locksmith indicating the locksmith's name, license number, date of separation, and such other information as the Commissioner may require.

Authority: T.C.A. § 62-11-106.

0780-5-13-.14 Code of Conduct.

- (1) Licensees or registrants shall discharge their duties with fidelity to the public, their clients, and with fairness and impartiality to all.
- (2) A licensee or registrant shall not use improper or questionable methods of soliciting business, including but not limited to misleading clients, utilizing scare tactics or causing damage to an otherwise functioning product, and shall not pay another person or accept payment from another person for engaging in these improper methods.
- (3) A licensee or registrant shall not associate his/her individual or business name with any business or event that engages in or attempts to engage in misrepresentation.
- (4) A licensee or registrant shall not disclose any client information obtained relative to locksmithing services performed to someone other than the client unless the disclosure is expressly authorized in writing by the client.
- (5) A licensee or registrant shall not misrepresent his/her locksmithing services, the features of any product, or make unwarranted claims about the merits of a product or a service that the licensee offers.
- (6) No licensee or registrant shall accept compensation or any other consideration from more than one interested party for the same service without the consent of all interested parties.
- (7) No licensee or registrant shall accept or offer commissions or allowances, directly or indirectly, from other parties dealing with the client in connection with work for which the licensee is responsible.
- (8) Before the execution of a contract to perform locksmithing services, a licensee or registrant shall disclose to the client any interest in a business that may affect the client. No licensee or registrant shall allow his or her interest in any business to affect the quality or results of the locksmithing work that the licensee or registrant may be called upon to perform.
- (9) Licensees and registrants shall not engage in false or misleading advertising.
- (10) A licensee or registrant shall not perform or recommend any locksmithing services that would violate applicable federal, state or local laws, or codes or pose a threat to public safety.
- (11) A licensee or registrant shall not perform or endeavor to perform locksmithing services while under the influence of or impaired by alcohol or a narcotic drug
- (12) Any vehicle dispatched by a licensed locksmith company for the purpose of conducting a business transaction for the locksmith company, regardless of whether the transaction requires a license for the activity or the individual dispatched is a licensed locksmith, shall conspicuously

display the licensed locksmith company's identity and its license number in accordance with T.C.A. § 62-11-116.

(13) Unless otherwise exempt, no licensed locksmith shall provide locksmith services except:

- (a) As an employee, agent or contractor of a registered locksmith company; or
- (b) As the holder of a locksmith company registration.

Authority: T.C.A. §§ 62-11-104, 62-11-106 and 62-11-116.

0780-05-13-.16 Reciprocity

(1) Pursuant to T.C.A. § 62-11-118, no locksmith, licensed in good standing in another jurisdiction, shall be required to meet the initial qualification education requirements for licensure in this state or be required to take and pass the locksmith examination if the applicant has any one (1) of the following Associated Locksmiths of America (ALOA) certified designations:

- (a) Certified registered locksmith (CRL);
- (b) Certified professional locksmith (CPL); or
- (c) Certified master locksmith (CML).

(2) In order to verify the licensee's status, a letter of good standing is required from at least one jurisdiction in which the applicant holds an active license or registration. The "letter of good standing" must detail how the applicant qualified for the license or registration, the date on which the license or registration was issued and the current license or registration status. A statement regarding any disciplinary action taken against the license or registration in any applicable jurisdiction is also required.

Authority: T.C.A. §§ 62-11-106 and 62-11-118.

* If a roll-call vote was necessary, the vote by the Agency on these rulemaking hearing rules was as follows:

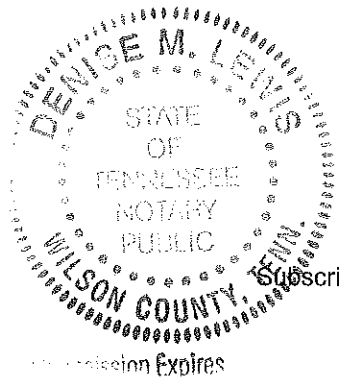
Board Member	Aye	No	Abstain	Absent	Signature (if required)
N/A					

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Commissioner (board/commission/ other authority) on 1/19/16 (mm/dd/yyyy), and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 12/04/14

Rulemaking Hearing(s) Conducted on: (add more dates). 01/27/15



Date: 1/19/16

Signature: Julie Mix McPeak

Name of Officer: Julie Mix McPeak

Title of Officer: Commissioner

Subscribed and sworn to before me on: 1/19/16

Notary Public Signature: Denise M. Lewis

My commission expires on: 2/15/16

All rulemaking hearing rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.

Herbert H. Slatery III
Herbert H. Slatery III
Attorney General and Reporter

3/18/2016
Date

Department of State Use Only

Filed with the Department of State on: 3/28/16

Effective on: 6/26/16

Tre Hargett
Tre Hargett
Secretary of State

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PUBLICATIONS

G.O.C. STAFF RULE ABSTRACT

AGENCY: Department of Commerce and Insurance,
Insurance Division

SUBJECT: Timely Filing of Premium Tax Returns; Fees

STATUTORY AUTHORITY: Tennessee Code Annotated, Sections 56-1-501,
56-1-701, 56-2-301, 56-4-205, 56-4-206, 56-4-216,
56-32-124, and 56-35-107.

EFFECTIVE DATES: July 7, 2016 through June 30, 2017

FISCAL IMPACT: None

STAFF RULE ABSTRACT: The rulemaking hearing rules establish electronic insurance premium tax return and payment filing requirements for insurance companies reporting such taxes in this state.

The rule establishes a convenience fee in the amount of up to ten dollars (\$10.00) per filing to cover the actual cost incurred by the Department for accepting electronic filings through the NAIC's Online Premium Tax for Insurance ("OPTins") tax filing and payment system, which will be payable by persons who file a return, document, or report with the Department in conjunction with any of the following:

1. Gross premium tax;
2. Workers' compensation gross premium tax;
3. Additional payment for fire insurance;
4. Retaliatory tax;
5. Taxation on HMOs;
6. Tax on title insurance risk rate charges; and
7. Any other tax or fee associated with the payment of 1-6.

Tennessee Code Annotated, Section 4-5-229 generally requires that any new fee or fee increase promulgated by state agency rule, in accordance with the UAPA, shall take effect on July 1, following

expiration of 90 days after filing with the Secretary of State. The 90-day period for this rule expires on July 7, 2016, making July 1, 2017, the July 1 following expiration.

Public Hearing Comments

One copy of a document containing responses to comments made at the public hearing must accompany the filing pursuant to T.C.A. § 4-5-222. Agencies shall include only their responses to public hearing comments, which can be summarized. No letters of inquiry from parties questioning the rule will be accepted. When no comments are received at the public hearing, the agency need only draft a memorandum stating such and include it with the Rulemaking Hearing Rule filing. Minutes of the meeting will not be accepted. Transcripts are not acceptable.

Comment 1

It was commented by two commenters that there is concern in the insurance industry that there are fields on the tax form in the OPTins system which are not alterable by the taxpayer, and may potentially result in inaccurate calculation of premium taxes due in the event of: (1) a change in tax rates as a result of a court order; (2) disagreement as to whether retaliatory taxes are due based on a company's home state; and (3) a glitch or error in the OPTins system. To remedy these concerns, the commenter requests: (1) all tax form fields be editable by taxpayers; (2) taxpayers be able to utilize an OPTins feature which permits payment of an alternative tax amount with an attached explanation as to why this alternative amount was paid; (3) a new alterable line be added to the tax form in OPTins which enables a taxpayer to enter and indicate the tax amount paid by the taxpayer, which differs from the tax amount calculated in the tax form; or (4) change the attestation as to the truthfulness of the tax filing to indicate that the forms and payments are true and accurate, but only when considering any protested amounts or disclosures included with the tax filing.

Agency Response to Comment 1

The Division and the commenters have discussed this comment at length and have reached an understanding as to this comment. It is agreed that as currently structured in the OPTins system, a taxpayer has complete autonomy to input the amounts taxable in the tax filing form to represent the amounts which the taxpayer believes to be true and accurate. Additionally, there is already a section in which a taxpayer may enter notes regarding any disputes as to tax calculations. This comment has been resolved.

Comment 2

It was commented that many insurance companies use a third party financial accounting system named TriTech to file and report financial information, and OPTins does not allow payment via ACH-credit for TriTech users. The commenter would like the Division to ensure OPTins will accept premium tax payments via ACH-credit for TriTech users, and requests this rule be deferred until such capability is available.

Agency Response to Comment 2

The Division agrees that OPTins should be able to accept ACH-credit payments from companies that report through TriTech. OPTins already accepts premium tax payments through ACH-credit and ACH-debit from companies that report directly to OPTins. OPTins is currently developing the ability to accept TriTech facilitated payments through ACH-credit. It is expected this capability will be available shortly. The Division disagrees that these rules should be deferred as OPTins is already working to develop this capability, and OPTins does accept payments through ACH-debit and credit today.

Comment 3

It was commented that there is no justification given by the Division as to the ten dollar (\$10) filing fee to be collected by OPTins set forth in the rule. The commenter questions whether this filing fee is in accordance with Chapter 155 of the Public Acts of 2015, which gives the Division authority to collect fees associated with electronic filings. The commenter further indicates concern that this filing fee shall be collected and retained by the OPTins system, rather than the Division.

Agency Response to Comment 3

The Division disagrees with this comment. The ten dollar (\$10) filing fee collected by OPTins represents the Division's actual costs associated with accepting premium tax filings and returns via electronic means. The Division and OPTins have entered into a Memorandum of Agreement which articulates that this ten dollar (\$10) filing fee is the Division's costs associated with making available an electronic filing system and is being collected by OPTins on behalf of the Division. Furthermore, were OPTins to remit these fees to the Division along with the premium taxes, the Division would be required to immediately repay these fees to OPTins, as the Division's costs for use of the OPTins system. For this reason, and transaction simplicity, OPTins collects and keeps the filing fees, as the costs which would otherwise be incurred by the Division.

Comment 4

It was commented that Chapter 155 of the Public Acts of 2015 does not give the Division authority to award a sole source contract to a single vendor without first engaging in the state's procurement process. The commenter suggests the Division's decision to use the OPTins system is an award of a sole source contract.

Agency Response to Comment 4

The Division disagrees with this comment. The Division has not awarded a sole source contract to any vendor in association with these rules. Rather, the Division has had a licensing agreement with OPTins since 2012 for the voluntary collection of premium tax filings and returns by electronic means. In processing a total of one billion, three hundred six million, six hundred twenty-two thousand, six hundred thirteen dollars and sixty-seven cents (\$1,306,622,613.67) since the Division began utilizing the OPTins system, the Division has never received a single complaint about the OPTins system and is unaware of any technical difficulties in its collection of premium tax filings and payments. Considering the Division's existing relationship with OPTins and the outstanding performance of the system over time, the Division chose to continue using the system with which it was already working and which a significant percentage of the market had already adopted.

Comment 5

It was commented that questions exist relative to whether a company will be able to supplement premium tax payments by electronic means or by paper check. Further, the commenter questioned whether amendments to filings can be made by electronic means or by paper amendment.

Agency Response to Comment 5

Pursuant to Chapter 155 of the Public Acts of 2015 and these rules, a filing company will be able to supplement their premium tax payments by electronic means; paper checks will not be an acceptable method of supplementation. Likewise, a filing company may amend their filings by electronic means; paper amendments will not be an acceptable form of filing amendment. That said, any amendment or payment supplement on any quarterly or annual premium tax return will not be subject to the filing fee. Additionally, in the event the Commissioner has awarded a waiver of the electronic filing in accordance with Chapter 155 of the Public Acts of 2015, then paper amendments and supplements by check would be acceptable. This comment has been resolved through discussions between the Division and commenters.

Comment 6

It was commented that the industry would like clarification as to the procedures to make payments under protest through OPTins.

Agency Response to Comment 6

The Division has worked with OPTins to have a check box button which reads "Pay Under Protest" which a filing company may select in connection with the company's premium tax payment. In addition, the company will be able to add commentary as to why the company is making payment under protest. In other words, space will be afforded to a company paying under protest to explain which parts of the return are being paid under protest and the company's reasons for disputing the calculated amount. OPTins is currently developing the ability to include on the payment confirmation which is provided to the company after successful payment is made to indicate that the payment was made under protest.

Regulatory Flexibility Addendum

Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rule making process as described in T.C.A. § 4-5-202(a)(3) and T.C.A. § 4-5-202(a), all agencies shall conduct a review of whether a proposed rule or rule affects small businesses.

The Department of Commerce and Insurance has considered whether the rules in these Rulemaking Hearing Rules are such that they will have an economic impact on small businesses (businesses with fifty (50) or fewer employees). The proposed rules are not anticipated to have a significant impact on small businesses. Tenn. Code Ann. §§ 56-1-501, 56-1-701, 56-2-301, 56-4-205, 56-4-206, 56-4-208, 56-4-216, 56-32-124, 56-35-107, and Acts 2015, Ch. 155 authorize the Commissioner to promulgate rules in order to regulate the electronic filing and payment of insurance premium tax returns and payments. The proposed rules establish electronic filing requirements for any insurance company filing premium tax returns and payments in the State of Tennessee.

The outcome of the analysis set forth in Tenn. Code Ann. § 4-5-403 is as follows:

- (1) The proposed rules will only apply to insurance companies filing premium tax returns and payments. While there may be some insurance companies considered to be small business affected by these rules, it is estimated that this number is small. Additionally, there is a waiver provision applicable to these rules enabling a company, upon good cause shown, to become exempt from the electronic filing and payment of insurance premium taxes.
- (2) The projected reporting, recordkeeping, and other administrative costs associated with compliance with this proposed rule, are anticipated to be minimal compared to the amount of insurance premium taxes filed annually in the State of Tennessee. Specifically, the fees associated with these rules amount to less than one percent (1%) of the taxes reported. Additionally, these fees represent the Insurance Division's actual costs in making available an electronic premium tax filing and payment system, as required by the Insurance Law.
- (3) The effect on small businesses is minimal. The proposed amendment will have no effect on consumers, and will only affect those insurance companies in filing insurance premium tax returns and payments in the State of Tennessee.
- (4) There are no alternative methods to make the proposed rule less costly, less intrusive, or less burdensome. Conversely, it is expected access to other premium tax collection systems, or development of an Insurance Division premium tax collection system would be far more costly than the minimal costs imposed pursuant to these rules.
- (5) This proposed rule was developed as collaboration between the Insurance Division and the insurance industry in the State of Tennessee. The Arkansas Department of Insurance similarly mandated electronic premium tax filing and payment through the OPTins system in December of 2015.
- (6) Only insurance companies filing insurance premium tax returns and payments are required to comply with this rule. For good cause shown, the Commissioner may exempt small businesses from the electronic filing requirements under these rules.

Impact on Local Governments

Pursuant to T.C.A. §§ 4-5-220 and 4-5-228 "any rule proposed to be promulgated shall state in a simple declarative sentence, without additional comments on the merits of the policy of the rules or regulation, whether the rule or regulation may have a projected impact on local governments." (See Public Chapter Number 1070 (<http://state.tn.us/sos/acts/106/pub/pc1070.pdf>) of the 2010 Session of the General Assembly)

This rule will not have an impact on local governments.

Additional Information Required by Joint Government Operations Committee

All agencies, upon filing a rule, must also submit the following pursuant to T.C.A. § 4-5-226(i)(1).

- (A) A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

These rules establish electronic insurance premium tax return and payment filing requirements for insurance companies reporting such taxes in the State of Tennessee.

- (B) A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

Tennessee Code Annotated §§ 56-1-501, 56-1-701, 56-2-301, 56-4-205, 56-4-206, 56-4-208, 56-4-216, 56-32-124, 56-35-107, and 2015 Public Acts, Chapter 155 authorize the Commissioner to promulgate rules to direct insurance companies filing insurance premium tax returns and payments in Tennessee to do so by electronic means, in a manner determined by the Commissioner, and also to collect reasonable fees associated with the Insurance Division's actual costs in making such electronic filing system available.

- (C) Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

These rules will affect any insurance company licensed in the State of Tennessee which is required to file insurance premium tax returns and/or make premium tax payments.

- (D) Identification of any opinions of the attorney general and reporter or any judicial ruling that directly relates to the rule;

The Department is not aware of any attorney general opinions or any judicial rulings directly related to this rule.

- (E) An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency's annual budget or five hundred thousand dollars (\$500,000), whichever is less;

None.

- (F) Identification of the appropriate agency representative or representatives, possessing substantial knowledge and understanding of the rule;

Mark Jaquish, Director of the Financial Analysis Section of the Insurance Division of the Tennessee Department of Commerce and Insurance.

- (G) Identification of the appropriate agency representative or representatives who will explain the rule at a scheduled meeting of the committees;

Kathleen Dixon, Assistant General Counsel for Insurance.

- (H) Office address, telephone number, and email address of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

Davy Crockett Tower, 8th Floor, 500 James Robertson Parkway, Nashville, Tennessee 37243; 615-532-6830; kathleen.dixon@tn.gov

- (I) Any additional information relevant to the rule proposed for continuation that the committee requests.

None.

Department of State**Division of Publications**

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Nashville, TN 37243

Phone: 615-741-2650

Email: publications.information@tn.gov**For Department of State Use Only**Sequence Number: 04-07-16Rule ID(s): 6176File Date: 4/8/16Effective Date: 7/7/16

Rulemaking Hearing Rule(s) Filing Form

*Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing (Tenn. Code Ann. § 4-5-205).**Pursuant to Tenn. Code Ann. § 4-5-229, any new fee or fee increase promulgated by state agency rule shall take effect on July 1, following the expiration of the ninety (90) day period as provided in § 4-5-207. This section shall not apply to rules that implement new fees or fee increases that are promulgated as emergency rules pursuant to § 4-5-208(a) and to subsequent rules that make permanent such emergency rules, as amended during the rulemaking process. In addition, this section shall not apply to state agencies that did not, during the preceding two (2) fiscal years, collect fees in an amount sufficient to pay the cost of operating the board, commission or entity in accordance with § 4-29-121(b).*

Agency/Board/Commission:	Department of Commerce and Insurance
Division:	Insurance Division
Contact Person:	Kathleen Dixon, Assistant General Counsel
Address:	The Davy Crockett Tower 500 James Robertson Parkway, 8th Floor Nashville, Tennessee
Zip:	37243
Phone:	615-532-6830
Email:	kathleen.dixon@tn.gov

Revision Type (check all that apply):☒ Amendment☒ New☐ Repeal**Rule(s) Revised (ALL chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please enter only ONE Rule Number/Rule Title per row)**

Chapter Number	Chapter Title
0780-01-50	Relating to the Timely Filing of Premium Tax Returns
Rule Number	Rule Title
0780-01-50-.01	Definitions
0780-01-50-.02	Purpose
0780-01-50-.03	Scope
0780-01-50-.04	Identification of Taxes, Fees and Other Obligations Covered
0780-01-50-.05	Filing Returns and Payment of Taxes
0780-01-50-.06	Severability Provision

Rules
Of
The Tennessee Department Of Insurance
Division Of Insurance

Chapter 0780-01-50
Relating To The Timely Filing Of Premium Tax Returns

Table Of Contents

0780-01-50-.01	Definitions
0780-01-50-.02	Purpose
0780-01-50-.03	Due Date of Payments Scope
0780-01-50-.04	Identification of Taxes, Fees and Other Obligations Covered
0780-01-50-.05	Filing Returns and Payment of Taxes
0780-01-50-.06	Severability Provision

0780-01-50-.01 DEFINITIONS Definitions.

- (1) "Tax return", as used herein, shall mean the tax return as identified in Section 56-4-205, Tennessee Code Annotated. "Commissioner," as used herein, means the commissioner of commerce and insurance.
- (2) "Payment", as used herein, means check payable to the Commissioner in the full amount due as calculated on the tax return. "Department" means the department of commerce and insurance.
- (3) "Commissioner", as used herein, means the Commissioner of Insurance. "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.
- (4) "Gross premiums," as used in this chapter, means maximum gross premiums as provided in the policy contracts, new and renewal, including policy or membership fees, whether paid in part or in whole by cash, automatic premium loans, dividends applied in any manner whatsoever, and without deduction or exclusion of dividends in any manner; but excluding premiums returned on cancelled policies, or on account of reduction in rates, or reductions in the amount insured or experience rating refunds on life insurance policies and disability insurance policies.
- (5) "Immediately available funds" as used in this chapter shall mean funds which are available to OPTins pursuant to rule 0780-01-50-.05.
- (6) "NAIC" means the National Association of Insurance Commissioners.
- (7) "OPTins" means the NAIC's Online Premium Tax for Insurance tax filing and payment program.
- (8) "Signature of attestation" means the taxpayer's certification that the tax return, and any accompanying forms or payments, have been examined and are, to the best of the taxpayer's knowledge, information, and belief, a true, correct, and complete tax return made in good faith, as evidenced by the taxpayer's mark either through an electronic verification on the OPTins tax form, or through submission of an electronic copy of a hand-signed form.

Authority: T.C.A. §§ 56-1-501, 56-1-701, and 56-2-301, 56-4-205, 56-4-216, and 2015 Public Acts, Chapter Number 155.

0780-01-50-.02 PURPOSE Purpose.

The purpose of this rule is to identify the two methods of making premium tax filings and payments promptly and correctly as required by Section 56-4-216, Tennessee Code Annotated. chapter is to establish the method required by the department for the filing of premium tax returns and the payment of premium taxes and other fees by electronic means.

Authority: T.C.A. §§ 56-1-501, 56-1-701, and 56-2-301, 56-4-205, 56-4-216, and 2015 Public Acts, Chapter Number 155.

0780-01-50-.03 DUE DATE OF PAYMENTS Scope.

For compliance with the requirements of Section 56-4-205, 206, 207, 208 and 209, Tennessee Code Annotated, all such taxes shall not be considered as paid on or before March 1 and /or September 1 of each year unless the tax returns and payment are actually received in the department on or before March 1 and/or September 1 of each year; except, that a tax return with payment will be considered "timely filed" provided such premium tax return and payment bears a registered mailing date no later than March 1 and/or September 1 and is transmitted by registered United States Mail, return receipt requested. When the due date falls on a non-business day (Sunday or legal holiday), the next business day following will be considered as the due date. Every entity required to file returns, reports or other documents and make payments pursuant to the taxes listed in rule 0780-01-50-.04 shall file such returns, reports or other documents and make such payments of premium taxes, fees or other obligations identified herein in the electronic format as specified by this chapter, no later than the date such payment or remittance of funds is required, in funds which are immediately available to OPTins pursuant to rule 0780-01-50-.05 on the due date of payment no later than the close of business.

Authority: T.C.A. §§ 56-1-501, 56-1-701, and 56-2-301, 56-4-205, 56-4-216, and 2015 Public Acts, Chapter Number 155.

0780-01-50-.04 Identification of Taxes, Fees and Other Obligations Covered.

Payments for the following taxes, fees or other obligations will be subject to payment pursuant to this chapter:

- (1) Gross premium tax as found in T.C.A. § 56-4-205;
- (2) Workers' Compensation gross premium tax as found in T.C.A. § 56-4-206;
- (3) Additional payment for fire insurance as found in T.C.A. § 56-4-208;
- (4) Retaliatory tax as found in T.C.A. § 56-4-218;
- (5) Taxation on Health Maintenance Organizations as found in T.C.A. § 56-32-124;
- (6) Tax on title insurance risk rate charges as found in T.C.A. § 56-35-107
- (7) Any other tax or fee, including the fee under rule 0780-01-50-.05(6) as may be associated with the payment of the above listed taxes.

Authority: T.C.A. §§ 56-1-501, 56-1-701, 56-2-301, 56-4-205, 56-4-206, 56-4-208, 56-4-216, 56-4-218, 56-32-124, 56-35-107, and 2015 Public Acts, Chapter Number 155.

0780-01-50-.05 Filing Returns and Payment of Taxes.

- (1) Every entity required to file a return, report or other document with the department in conjunction with the taxes listed in rule 0780-01-50-.04, shall file any such return, report or other document with the department electronically, no later than the date such return, report or other document is required by law to be filed with the department. Such return, report or document filed electronically with the department shall be filed through OPTins and signed by the taxpayer by means of an acceptable signature of attestation.
- (a) Filings made to OPTins on or before the day the tax payment is due shall be deemed received by the department on the date received by OPTins.
- (2) Every entity required to file a return shall also pay any taxes owed through OPTins by any means accepted by OPTins.
- (a) Payments remitted through Automated Clearing House Debit (ACH-debit) payable to OPTins on or before the day the tax payment is due shall be deemed received by the department and paid to the department on the date the ACH-debit is initiated.
- (b) Payments made through Automated Clearing House Credit (ACH-credit) payable to OPTins shall be deemed received by the department and paid to the department, so long as the ACH-credit is received by OPTins on or before the day the tax payment is due.
- (c) The commissioner may waive rule 0780-01-50-.05(2)(a) and (b) in the event OPTins has been subject to some kind of catastrophic event.
- (3) Failure to timely make such payment in immediately available funds shall subject the taxpayer to penalty and interest as provided by law for delinquent or deficient tax payments pursuant to T.C.A. § 56-4-216. If payment is timely made in other than immediately available funds, such that payment is not received by the state on the date payments are due, penalty and interest shall be added to the amount of tax due from the due date of the tax payment to the date that funds from the tax payment become available to the state.
- (4) If a tax payment due date falls on a Saturday, Sunday or banking holiday, the electronic payment must be made so that the funds are immediately available on the first business day after the due date.
- (5) The requirement to make electronic payments does not change the requirement to file returns, reports and documents associated with said payments in the manner prescribed by rule 0780-01-50-.05(1).
- (6) Every entity required to file a return shall be responsible for paying a convenience fee of up to Ten Dollars (\$10.00) per filing to cover the department's actual costs incurred by accepting electronic filings through OPTins. Such convenience fee shall be assessed in addition to any applicable penalty and interest. Such convenience fee shall be in addition to the premium tax.
- (7) In the event an entity believes the correct calculation of its taxes contemplated in rule 0780-01-50-.04 is different from the taxes calculated by OPTins, that entity retains the right to dispute the tax calculation after payment of the tax as assessed.

Authority: T.C.A. §§ 56-1-501, 56-1-701, 56-2-301, 56-4-205, 56-4-216, and 2015 Public Acts, Chapter Number 155.

0780-01-50-.06 Severability Provision.

If any provision of this chapter or the application thereof to any person or circumstances is for any reason held to be invalid, the remainder of the chapter and the application of such provision to other persons or circumstances shall not be affected thereby.

Authority: T.C.A. §§ 56-1-501, 56-1-701, 56-2-301, 56-4-205, 56-4-216, and 2015 Public Acts, Chapter Number 155.

* If a roll-call vote was necessary, the vote by the Agency on these rulemaking hearing rules was as follows:

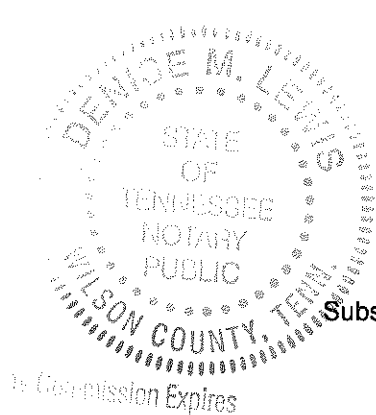
Board Member	Aye	No	Abstain	Absent	Signature (if required)
N/A					

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Commissioner of the Department of Commerce and Insurance on 03/29/2016 (mm/dd/yyyy), and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: January 12, 2016

Rulemaking Hearing(s) Conducted on: (add more dates). March 8, 2016



Date: 3/29/16

Signature: Julie Mix McPeak

Name of Officer: Julie Mix McPeak

Title of Officer: Commissioner, Department of Commerce and Insurance

Subscribed and sworn to before me on: 3/29/16

Notary Public Signature: Denise M. Lewis

My commission expires on: 1/15/20

All rulemaking hearing rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.

Herbert H. Slatery III
Herbert H. Slatery III
Attorney General and Reporter
4/8/2016
Date

Department of State Use Only

Filed with the Department of State on: 4/8/16

Effective on: 7/7/16

Tre Hargett
Tre Hargett
Secretary of State

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G.O.C. STAFF RULE ABSTRACT

<u>AGENCY:</u>	Tennessee Advisory Committee on Acupuncture/Board of Medical Examiners
<u>SUBJECT:</u>	Acupuncturists - Fees
<u>STATUTORY AUTHORITY:</u>	Tennessee Code Annotated, Section 63-6- 1004(a)(4)
<u>EFFECTIVE DATES:</u>	July 19, 2016 through June 30, 2017
<u>FISCAL IMPACT:</u>	None
<u>STAFF RULE ABSTRACT:</u>	The rulemaking hearing rule will reduce the biennial license renewal fee from four hundred dollars (\$400) to three hundred dollars (\$300).

Public Hearing Comments

One copy of a document containing responses to comments made at the public hearing must accompany the filing pursuant to T.C.A. § 4-5-222. Agencies shall include only their responses to public hearing comments, which can be summarized. No letters of inquiry from parties questioning the rule will be accepted. When no comments are received at the public hearing, the agency need only draft a memorandum stating such and include it with the Rulemaking Hearing Rule filing. Minutes of the meeting will not be accepted. Transcripts are not acceptable.

There were no comments either written or oral.

Regulatory Flexibility Addendum

Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rule making process as described in T.C.A. § 4-5-202(a)(3) and T.C.A. § 4-5-202(a), all agencies shall conduct a review of whether a proposed rule or rule affects small businesses.

- (1) **The extent to which the rule or rules may overlap, duplicate, or conflict with other federal, state, and local governmental rules.**

This rule amendment does not overlap, duplicate, or conflict with other federal, state, and local government rules.

- (2) **Clarity, conciseness, and lack of ambiguity in the rule or rules.**

This rule amendment is established with clarity, conciseness, and lack of ambiguity.

- (3) **The establishment of flexible compliance and/or reporting requirements for small businesses.**

This rule amendment does not establish flexible compliance and/or reporting requirements for small businesses.

- (4) **The establishment of friendly schedules or deadlines for compliance and/or reporting requirements for small businesses.**

This rule amendment does not establish friendly schedules or deadlines for compliance reporting requirements for small businesses.

- (5) **The consolidation or simplification of compliance or reporting requirements for small businesses.**

This rule amendment does not consolidate or simplify compliance or reporting requirements for small businesses.

- (6) **The establishment of performance standards for small businesses as opposed to design or operational standards required in the proposed rule.**

This rule amendment does not establish performance standards for small businesses as opposed to design or operational standards required for the proposed rule.

- (7) **The unnecessary creation of entry barriers or other effects that stifle entrepreneurial activity, curb innovation, or increase costs.**

This rule amendment does not create unnecessary barriers or other effects that stifle entrepreneurial activity, curb innovation, or increase costs.

STATEMENT OF ECONOMIC IMPACT TO SMALL BUSINESSES

ame of Board, Committee or Council: Tennessee Advisory Committee for Acupuncture

Rulemaking hearing date: August 17, 2015

- 1. Type or types of small business and an identification and estimate of the number of small businesses subject to the proposed rule that would bear the cost of, and/or directly benefit from the proposed rule:**

This rule amendment will affect acupuncture licensees but will not affect the additional renewal fee for Acupuncture Detoxification Specialists. Acupuncture licensees will benefit from the one hundred dollar (\$100) fee reduction.

- 2. Projected reporting, recordkeeping and other administrative costs required for compliance with the proposed rule, including the type of professional skills necessary for preparation of the report or record:**

These proposed rule amendments will not affect reporting or recordkeeping and do not involve administrative costs.

- 3. Statement of the probable effect on impacted small businesses and consumers:**

The Board does not anticipate that there will be any adverse impacts to small businesses as small businesses could benefit from the fee reduction. These proposed rule amendments should not have any impact on consumers.

- 4. Description of any less burdensome, less intrusive or less costly alternative methods of achieving the purpose and/or objectives of the proposed rule that may exist, and to what extent, such alternative means might be less burdensome to small business:**

There are no less burdensome, less intrusive, or less costly methods of achieving the purpose and/or objectives of the proposed rule amendment.

- 5. Comparison of the proposed rule with any federal or state counterparts:**

Federal: None.

State: Many boards, currently operating at a surplus, are reducing some licensure fees.

- 6. Analysis of the effect of the possible exemption of small businesses from all or any part of the requirements contained in the proposed rule.**

These proposed rule amendments do not provide exemptions for small businesses.

Impact on Local Governments

Pursuant to T.C.A. §§ 4-5-220 and 4-5-228 "any rule proposed to be promulgated shall state in a simple declarative sentence, without additional comments on the merits of the policy of the rules or regulation, whether the rule or regulation may have a projected impact on local governments." (See Public Chapter Number 1070 (<http://state.tn.us/sos/acts/106/pub/pc1070.pdf>) of the 2010 Session of the General Assembly)

The proposed rule amendments should not have a financial impact on local governments.

Additional Information Required by Joint Government Operations Committee

All agencies, upon filing a rule, must also submit the following pursuant to T.C.A. § 4-5-226(i)(1).

- (A) A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

This rule amendment will reduce the biennial renewal fee from four hundred dollars (\$400.00) to three hundred dollars (\$300.00).

- (B) A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

None.

- (C) Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

This rule amendment will affect acupuncture licensees but will not affect the additional renewal fee for Acupuncture Detoxification Specialists.

- (D) Identification of any opinions of the attorney general and reporter or any judicial ruling that directly relates to the rule;

None.

- (E) An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency's annual budget or five hundred thousand dollars (\$500,000), whichever is less;

This rule amendment should not result in any increase or decrease in state or local government revenues or expenditures.

- (F) Identification of the appropriate agency representative or representatives, possessing substantial knowledge and understanding of the rule;

Hannah Lanford, Assistant General Counsel, Department of Health.

- (G) Identification of the appropriate agency representative or representatives who will explain the rule at a scheduled meeting of the committees;

Hannah Lanford, Assistant General Counsel, Department of Health.

- (H) Office address, telephone number, and email address of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

Office of General Counsel, Department of Health, 665 Mainstream Drive, Nashville, Tennessee 37243, (615) 741-1611, Hannah.Lanford@tn.gov.

- (I) Any additional information relevant to the rule proposed for continuation that the committee requests.

None.

Department of State**Division of Publications**

312 Rosa L. Parks Avenue, 8th Floor Snodgrass/TN Tower

Nashville, TN 37243

Phone: 615-741-2650

Email: publications.information@tn.gov**For Department of State Use Only**Sequence Number: 04-13-16Rule ID(s): 6181File Date: 4/20/16Effective Date: 7/19/16

Rulemaking Hearing Rule(s) Filing Form

Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing (Tenn. Code Ann. § 4-5-205).

Pursuant to Tenn. Code Ann. § 4-5-229, any new fee or fee increase promulgated by state agency rule shall take effect on July 1, following the expiration of the ninety (90) day period as provided in § 4-5-207. This section shall not apply to rules that implement new fees or fee increases that are promulgated as emergency rules pursuant to § 4-5-208(a) and to subsequent rules that make permanent such emergency rules, as amended during the rulemaking process. In addition, this section shall not apply to state agencies that did not, during the preceding two (2) fiscal years, collect fees in an amount sufficient to pay the cost of operating the board, commission or entity in accordance with § 4-29-121(b).

Agency/Board/Commission:	Tennessee Advisory Committee for Acupuncture
Division:	
Contact Person:	Hannah Lanford, Assistant General Counsel
Address:	665 Mainstream Drive, Nashville, Tennessee
Zip:	37243
Phone:	(615)741-1611
Email:	Hannah.Lanford@tn.gov

Revision Type (check all that apply):☒ Amendment☐ New☐ Repeal

Rule(s) Revised (ALL chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please enter only **ONE** Rule Number/Rule Title per row)

Chapter Number	Chapter Title
0880-12	General Rules and Regulations Governing the Practice of Acupuncturists
Rule Number	Rule Title
0880-12-.06	Fees

GENERAL RULES AND REGULATIONS GOVERNING
THE PRACTICE OF ACUPUNCTURISTS

CHAPTER 0880-12

(Rule 0880-12-.05, continued)

alcohol and substance abuse or chemical dependency services including counseling. Accompanying this proof must also be a certification from the supervising certified acupuncturist or medical director of the institution, facility, or entity attesting to employment and acceptance of supervisory responsibility.

- (g) Disclose the circumstances surrounding any of the following:
 1. Conviction of any criminal law violation of any country, state or municipality, except minor traffic violations.
 2. The denial of professional licensure/certification application by any other state or the discipline of licensure/certification in any state.
 3. Loss or restriction of licensure/certification.
 4. Any civil suit judgment or civil suit settlement in which the applicant was a party defendant including, without limitation, actions involving malpractice, breach of contract, antitrust activity or any other civil action remedy recognized under the country's or state's statutory, common or case law.
 5. Failure of any professional licensure or certification examination.
- (h) An applicant shall cause to be submitted to the Committee's administrative office directly from the vendor identified in the Committee's certification application materials, the result of a criminal background check.
- (i) Cause to be submitted the equivalent of a Tennessee Certificate of Endorsement (verification of licensure/certification) from each licensing/certifying board of each state or country in which the applicant holds or has ever held a license/certificate to practice any profession that indicates the applicant holds or held an active license/certificate and whether it is in good standing presently or was at the time it became inactive. It is the applicant's responsibility to request this information be sent directly from each such licensing/certifying board to the Administrative Office.
- (j) Submit the fees required in Rule 0880-12-.06.

- (2) Application review and limited certification decisions shall be governed by Rule 0880-12-.07.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-6-101, 63-6-214, 63-6-1002, 63-6-1004, 63-6-1005, and 63-6-1007. **Administrative History:** Original rule filed October 18, 2002; effective January 1, 2003. Amendment filed March 17, 2006; effective May 31, 2006.

0880-12-.06 FEES. All fees provided for in this rule are non-refundable.

	Acupuncturist	Acupuncture Dextoxification Specialist
(1) Application fee to be submitted at the time of application.	\$500.00	\$ 75.00
(2) Initial certification fee to be submitted at the time of application.	\$250.00	\$ 25.00
(3) Biennial renewal fee to be submitted	\$400.00	\$ 50.00

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GENERAL RULES AND REGULATIONS GOVERNING
THE PRACTICE OF ACUPUNCTURISTS

CHAPTER 0880-12

(Rule 0880-12-.06, continued)

every two (2) years when certification
renewal is due.

(3)	Biennial renewal fee to be submitted every two (2) years when certification renewal is due.	\$300.00	\$ 50.00
(4)	Late renewal fee.	\$100.00	\$ 50.00
(5)	Certification reinstatement and / or restoration fee.	\$100.00	\$ 50.00
(6)	Duplication of Certificate fee.	\$ 25.00	\$ 10.00
(7)	Biennial state regulatory fee to be submitted at the time of application.	\$ 10.00	\$ 10.00

- (8) All fees may be paid in person, by mail or electronically by cash, check, money order, or by credit and/or debit cards accepted by the Division of Health Related Boards. If the fees are paid by certified, personal or corporate check they must be drawn against an account in a United States Bank, and made payable to the Advisory Committee for Acupuncture.

Authority: T.C.A. §§ 4-3-1011, 4-5-202, 4-5-204, ~~9-4-511~~ 63-1-106, 63-1-107, 63-6-101, 63-6-1004, 63-6-1005, and 63-6-1009. **Administrative History:** Original rule filed October 18, 2002; effective January 1, 2003. Amendment filed January 5, 2004; effective March 20, 2004. Amendment filed January 22, 2013; effective April 22, 2013.

0880-12-.07 APPLICATION REVIEW, APPROVAL, AND DENIAL.

- (1) Review of all applications to determine whether or not the application file is complete may be delegated to the Committee's administrator.
- (2) A temporary authorization to practice, as described in T.C.A. § 63-1-142 may be issued to an applicant pursuant to an initial determination made by a Committee and Board designee who have both reviewed the completed application and determined that the applicant has met all the requirements for certification, renewal or reinstatement. The temporary authorization to practice is valid for a period of six (6) months from the date of issuance of the temporary authorization to practice and may not be extended or renewed. If the Committee or Board subsequently makes a good faith determination that the applicant has not met all the requirements for certification, renewal or reinstatement and therefore denies, limits, conditions or restricts certification, renewal or reinstatement, the applicant may not invoke the doctrine of estoppel in a legal action brought against the state based upon the issuance of the temporary authorization to practice and the subsequent denial, limitation, conditioning or restricting of certification.
- (3) If an application is incomplete when received by the Administrative Office, or the reviewing Committee and/or Board member or the Committee's/Board's designee determine additional information is required from an applicant before an initial determination can be made, the Board administrator shall notify the applicant of the information required. The applicant shall cause the requested information to be received in the Administrative Office on or before the ninetieth (90th) day after the initial letter notifying the applicant of the required information is sent.

* If a roll-call vote was necessary, the vote by the Agency on these rulemaking hearing rules was as follows:

Board Member	Aye	No	Abstain	Absent	Signature (if required)
Jill L. Kelly	X				
Serina Moore Scott	X				
Charmaine Jamieson				X	
Shelia Ann Berry-Sanders				X	
Jian Yan	X				

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Tennessee Advisory Committee for Acupuncture (board/commission/ other authority) on 08/17/2015 (mm/dd/yyyy), and is in compliance with the provisions of T.C.A. § 4-5-222.

Board Member	Aye	No	Abstain	Absent	Signature (if required)
Michael D. Zanolli, M.D.	X				
Subhi D. Ali, M.D.	X				
Dennis Higdon, M.D.	X				
Michael John Baron, M.D.	X				
Neal Beckford, M.D.				X	
Deborah Christiansen, M.D.				X	
Clinton A. Musil, Jr., M.D.				X	
Patricia Eller	X				
Barbara Outhier	X				
Nina Yeiser	X				
Melanie Blake, M.D.	X				
W. Reeves Johnson, Jr. MD				X	

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Board of Medical Examiners (board/commission/ other authority) on 09/16/2015 (mm/dd/yyyy), and is in compliance with the provisions of T.C.A. § 4-5-222.

Tennessee Advisory Committee for Acupuncture Rules
Rule 0880-12-.06
General Rules and Regulations Governing the Practice of Acupuncturists
Fees

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 04/06/15 (mm/dd/yy)

Rulemaking Hearing(s) Conducted on: (add more dates). 08/17/15 (mm/dd/yy)

Date: 09/30/15

Signature: [Signature]

Name of Officer: Hannah Lanford

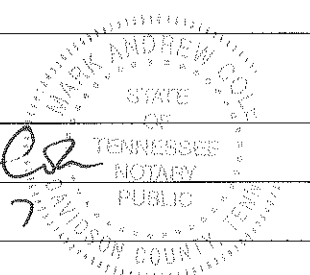
Assistant General Counsel

Title of Officer: Department of Health

Subscribed and sworn to before me on: 9/30/15

Notary Public Signature: [Signature]

My commission expires on: May 8 2017



All rulemaking hearing rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.

[Signature]
Herbert H. Slatery III
Attorney General and Reporter
4/11/2016
Date

Department of State Use Only

Filed with the Department of State on: 4/20/16

Effective on: 7/19/16

[Signature]
Tre Hargett
Secretary of State

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PUBLICATIONS

G.O.C. STAFF RULE ABSTRACT

AGENCY: Tennessee Board for Communications Disorders and Sciences Council for Licensing Hearing Instrument Specialists/Tennessee Board of Communications Disorders and Sciences

SUBJECT: Hearing Instrument Specialists - Fees

STATUTORY AUTHORITY: Tennessee Code Annotated, Section 63-17-115

EFFECTIVE DATES: July 24, 2016 through June 30, 2017

FISCAL IMPACT: None

STAFF RULE ABSTRACT: The rulemaking hearing rule will reduce the written endorsement/verification fee from twenty dollars (\$20.00) to zero and reduce the biennial license renewal fee from seven hundred dollars (\$700) to five hundred dollars (\$500).

Public Hearing Comments

One copy of a document containing responses to comments made at the public hearing must accompany the filing pursuant to T.C.A. § 4-5-222. Agencies shall include only their responses to public hearing comments, which can be summarized. No letters of inquiry from parties questioning the rule will be accepted. When no comments are received at the public hearing, the agency need only draft a memorandum stating such and include it with the Rulemaking Hearing Rule filing. Minutes of the meeting will not be accepted. Transcripts are not acceptable.

There were no public comments, either written or oral.

Regulatory Flexibility Addendum

Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rule making process as described in T.C.A. § 4-5-202(a)(3) and T.C.A. § 4-5-202(a), all agencies shall conduct a review of whether a proposed rule or rule affects small businesses.

- (1) **The extent to which the rule or rules may overlap, duplicate, or conflict with other federal, state, and local governmental rules.**

This rule amendment does not overlap, duplicate, or conflict with other federal, state, and local government rules.

- (2) **Clarity, conciseness, and lack of ambiguity in the rule or rules.**

This rule amendment is established with clarity, conciseness, and lack of ambiguity.

- (3) **The establishment of flexible compliance and/or reporting requirements for small businesses.**

This rule amendment does not establish any new compliance or reporting requirements.

- (4) **The establishment of friendly schedules or deadlines for compliance and/or reporting requirements for small businesses.**

This rule amendment does not establish any new schedules or deadlines.

- (5) **The consolidation or simplification of compliance or reporting requirements for small businesses.**

This rule amendment does not establish any new compliance or reporting requirements.

- (6) **The establishment of performance standards for small businesses as opposed to design or operational standards required in the proposed rule.**

This rule amendment does not establish performance standards for small businesses as opposed to design or operational standards required for the proposed rule.

- (7) **The unnecessary creation of entry barriers or other effects that stifle entrepreneurial activity, curb innovation, or increase costs.**

This rule amendment does not create unnecessary barriers or other effects that stifle entrepreneurial activity, curb innovation, or increase costs.

STATEMENT OF ECONOMIC IMPACT TO SMALL BUSINESSES

Name of Board, Committee or Council: Tennessee Board of Communications Disorders and Sciences Council for Licensing Hearing Instrument Specialists

Rulemaking hearing date: 09/25/2015

- 1. Type or types of small business and an identification and estimate of the number of small businesses subject to the proposed rule that would bear the cost of, and/or directly benefit from the proposed rule:**

These rule amendments will affect all licensees of the Council for Licensing Hearing Instrument Specialists. Currently, there are one hundred thirty-three (133) licensees, twenty (20) apprentices, and seventeen (17) applications in process. These licensees will benefit from the two hundred dollar (\$200) fee reduction. The removal of the written endorsement/verification fee will benefit those applicants moving out of the state and seeking such endorsement/verification.

- 2. Projected reporting, recordkeeping and other administrative costs required for compliance with the proposed rule, including the type of professional skills necessary for preparation of the report or record:**

These proposed rule amendments should not affect reporting or recordkeeping and do not involve administrative costs. The proposed rules reduce existing fee requirements and as such, do not require reporting, recordkeeping, or other administrative costs in order to comply with the proposed rule change.

- 3. Statement of the probable effect on impacted small businesses and consumers:**

The Board does not anticipate that there will be any adverse impacts to small businesses as small businesses could benefit from the fee reduction. These proposed rule amendments should not have any impact on consumers.

- 4. Description of any less burdensome, less intrusive or less costly alternative methods of achieving the purpose and/or objectives of the proposed rule that may exist, and to what extent, such alternative means might be less burdensome to small business:**

There are no less burdensome, less intrusive, or less costly methods of achieving the purpose and/or objectives of the proposed rule amendment.

- 5. Comparison of the proposed rule with any federal or state counterparts:**

Federal: None.

State: Many boards, currently operating at a surplus, are reducing some licensure fees.

Also, other boards are discussing removing any endorsement/verification fees from their rules.

- 6. Analysis of the effect of the possible exemption of small businesses from all or any part of the requirements contained in the proposed rule.**

These proposed rule amendments do not provide exemptions for small businesses.

Impact on Local Governments

Pursuant to T.C.A. §§ 4-5-220 and 4-5-228 "any rule proposed to be promulgated shall state in a simple declarative sentence, without additional comments on the merits of the policy of the rules or regulation, whether the rule or regulation may have a projected impact on local governments." (See Public Chapter Number 1070 (<http://state.tn.us/sos/acts/106/pub/pc1070.pdf>) of the 2010 Session of the General Assembly)

The proposed rule amendments should not have a financial impact on local governments.

Additional Information Required by Joint Government Operations Committee

All agencies, upon filing a rule, must also submit the following pursuant to T.C.A. § 4-5-226(i)(1).

- (A) A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

These amendments will reduce the written endorsement/verification fee to zero.

Additionally, these amendments will reduce the biennial licensure renewal fee from \$700.00 to \$500.00.

- (B) A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

None.

- (C) Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

These rule amendments will affect all licensees of the Council for Licensing Hearing Instrument Specialists. Currently, there are one hundred thirty-three (133) licensees, twenty (20) apprentices, and seventeen (17) applications in process.

- (D) Identification of any opinions of the attorney general and reporter or any judicial ruling that directly relates to the rule;

None.

- (E) An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency's annual budget or five hundred thousand dollars (\$500,000), whichever is less;

These rules should not result in any increase or decrease in state and local government revenues or expenditures.

- (F) Identification of the appropriate agency representative or representatives, possessing substantial knowledge and understanding of the rule;

Hannah Lanford, Assistant General Counsel, Department of Health.

- (G) Identification of the appropriate agency representative or representatives who will explain the rule at a scheduled meeting of the committees;

Hannah Lanford, Assistant General Counsel, Department of Health.

- (H) Office address, telephone number, and email address of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

Office of General Counsel, 665 Mainstream Drive, Nashville, Tennessee 37243, (615) 741-1611, Hannah.Lanford@tn.gov.

- (I) Any additional information relevant to the rule proposed for continuation that the committee requests.

None.

**Department of State
Division of Publications**

312 Rosa L. Parks Avenue, 8th Floor Snodgrass/TN Tower
Nashville, TN 37243
Phone: 615-741-2650
Email: publications.information@tn.gov

For Department of State Use Only

Sequence Number: 04-23-16
Rule ID(s): 6184
File Date: 4/25/16
Effective Date: 7/24/16

Rulemaking Hearing Rule(s) Filing Form

Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing (Tenn. Code Ann. § 4-5-205).

Pursuant to Tenn. Code Ann. § 4-5-229, any new fee or fee increase promulgated by state agency rule shall take effect on July 1, following the expiration of the ninety (90) day period as provided in § 4-5-207. This section shall not apply to rules that implement new fees or fee increases that are promulgated as emergency rules pursuant to § 4-5-208(a) and to subsequent rules that make permanent such emergency rules, as amended during the rulemaking process. In addition, this section shall not apply to state agencies that did not, during the preceding two (2) fiscal years, collect fees in an amount sufficient to pay the cost of operating the board, commission or entity in accordance with § 4-29-121(b).

Agency/Board/Commission:	Tennessee Board of Communications Disorders and Sciences Council for Licensing Hearing Instrument Specialists
Division:	
Contact Person:	Hannah Lanford, Assistant General Counsel
Address:	665 Mainstream Drive, Nashville, Tennessee
Zip:	37243
Phone:	(615) 741-1611
Email:	Hannah.Lanford@tn.gov

Revision Type (check all that apply):

- ☒ Amendment
☐ New
☐ Repeal

Rule(s) Revised (ALL chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please enter only ONE Rule Number/Rule Title per row)

Chapter Number	Chapter Title
1370-02	General Rules Governing Hearing Instrument Specialists
Rule Number	Rule Title
1370-02-.06	Fees

(Rule 1370-02-.05, continued)

2000. Amendment filed March 17, 2006; effective May 31, 2006. Amendment filed June 29, 2007; effective September 12, 2007.

1370-02-.06 FEES.

- (1) The fees authorized by the Tennessee Council for Hearing Instrument Specialists Act (T.C.A. §§63-17-201, *et seq.*) and other applicable statutes are established as follows:
 - (a) Application Fee - A nonrefundable fee to be paid by all applicants. It must be paid to the Council each time an application for licensure is filed, or a license is reactivated. This fee includes the Initial License Fee and /or the fee for Licensure by Reciprocity.
 - (b) Council Operations Fee - A non-refundable fee to be paid by each hearing instrument specialist. This fee shall be paid by the last day in the licensee's birth month in the non-renewal year. This fee shall be effective for two (2) renewal cycles for each licensee. This fee shall expire at midnight on December 31, 2016.
 - (c) Duplicate License or Duplicate Certificate Fee - A nonrefundable fee to be paid when an individual requests a replacement for a lost/destroyed "artistically designed" license or a lost/destroyed renewal certificate.
 - (d) Examination (and Retake) Fee - A fee to be paid prior to each time an examination, or any component of an examination, is taken or retaken. The Examination (and Retake) Fee is nonrefundable if the examination, or any component of an examination, is taken or retaken. If the Examination (and Retake) Fee is paid but the examination or examination component(s) are not taken or retaken, the Examination (and Retake) Fee, except for twenty-five dollars (\$25.00), shall be refunded if the applicant submits a refund request within thirty (30) days from when the examination that the applicant was scheduled to take was administered.
 - (e) Late Renewal Fee - a nonrefundable fee to be paid when licensee fails to timely renew his license. This is an additional fee which must be submitted along with the Licensure Renewal Fee (Biennial) and the State Regulatory Fee.
 - (f) Licensure Renewal Fee (Biennial) - A nonrefundable fee to be paid by all license and certificate holders prior to issuance of the "artistically designed" license on a biennial renewal basis. This fee also applies to individuals who reactivate a retired or lapsed certificate or license.
 - (g) State Regulatory Fee - To be paid by all individuals at the time of application and with all renewal applications.
 - (h) Written Endorsement/Verification Fee - A nonrefundable fee paid for each certification, verification, or endorsement of a licensee's record for any purpose.
- (2) All fees may be paid in person, by mail or electronically by cash, check, money order, or by credit and/or debit cards accepted by the Division. If the fees are paid by certified, personal or corporate check they must be drawn against an account in a United States Bank, and made payable to the Council for Licensing Hearing Instrument Specialists.
- (3) Fee Schedule

(Rule 1370-02-.06, continued)

(a) Hearing Instrument Specialists

Type Fee	Amount
1. Application Fee.....	\$ 450.00
2. Duplicate License or Duplicate Certificate Fee	\$ 25.00
3. Written Endorsement/Verification Fee	\$ 20.00
3. Written Endorsement/Verification Fee	\$ 0.00
4. Examination Fees	
(i) Written - 1st attempt.....	\$ 175.00
(ii) Written - Retake	\$ 175.00
(iii) Practical - 1st attempt.....	\$ 175.00
(iv) Practical - Retake	\$ 125.00
5. Late Renewal Fee	\$ 150.00
6. Licensure Renewal Fee (Biennial)	\$ 700.00
6. Licensure Renewal Fee (Biennial)	\$ 500.00
7. State Regulatory Fee (Biennial)	\$ 10.00
8. Council Operations Fee..... (Paid in the non-renewal year)	\$ 300.00

(b) Apprentice Hearing Instrument Specialist

Type Fee	Amount
1. Application Fee.....	\$ 125.00
2. Examination and Retake Fee.....	\$ 125.00
3. State Regulatory Fee	\$ 10.00

Authority: T.C.A. §§ 63-17-201, 63-17-203, 63-17-210, 63-17-211, 63-17-214, and 63-17-215.

Authority: ~~T.C.A. §§ 4-5-202, 4-5-204, 63-17-105, 63-17-201, 63-17-203, 63-17-210 and 63-17-215.~~
Administrative History: For Administrative History prior to November, 1987 see page 1. Repeal and new rule filed September 24, 1987; effective November 8, 1987. Repeal and new rule filed April 29, 1992; effective June 13, 1992. Repeal and new rule renumbered from 0760-1-.06 filed December 28, 1999; effective March 12, 2000. Amendment filed February 10, 2000; effective April 25, 2000. Amendment filed April 17, 2003; effective July 1, 2003. Amendment filed June 29, 2007; effective September 12, 2007. Amendments filed April 29, 2011; to have been effective July 28, 2011. The Government Operations Committee stayed for 60 days the amendments; new effective Date September 25, 2011. Withdrawal of amendments 1370-02-.06(3)(a)1 through 7 and 1370-02-.06(3)(b) filed September 22, 2011; effective September 25, 2011. Amendments 1370-02-.06(3)(a)1 through 8 and 1370-02-.06(3)(b) were originally

* If a roll-call vote was necessary, the vote by the Agency on these rulemaking hearing rules was as follows:

Board Member	Aye	No	Abstain	Absent	Signature (if required)
Thomas Stewart	X				
Randy Williams	X				
Dr. Frederick Rayne	X				
Jerry L. Hall	X				
Lordy Dell Smith	X				

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Tennessee Board of Communications Disorders and Sciences Council for Licensing Hearing Instrument Specialists (board/commission/ other authority) on 09/25/2015 (mm/dd/yyyy), and is in compliance with the provisions of T.C.A. § 4-5-222.

Board Member	Aye	No	Abstain	Absent	Signature (if required)
Debby H. Starr	X				
Carrie M. Crittendon	X				
Mary Velvet Buehler	X				
Dr. Kimberly Vinson	X				
Julie Anne Crosby-Davis	X				
Terri M. Flynn	X				
Richard E. Morton				X	

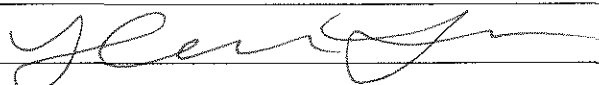
I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Tennessee Board of Communication Disorders and Sciences (board/commission/ other authority) on 11/17/2015 (mm/dd/yyyy), and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 07/08/15 (mm/dd/yy)

Rulemaking Hearing(s) Conducted on: (add more dates). 09/25/15 (mm/dd/yy)

Date: 04/11/16

Signature: 

Name of Officer: Hannah Lanford

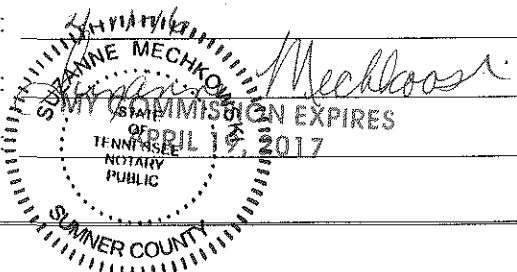
Assistant General Counsel

Title of Officer: Department of Health

Subscribed and sworn to before me on:

Notary Public Signature: 

My commission expires on: APRIL 15, 2017



Tennessee Board of Communications Disorders and Sciences
Council for Licensing Hearing Instrument Specialists
Rule 1370-02-.06
General Rules Governing Hearing Instrument Specialists
Fees

All rulemaking hearing rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.

Herbert H. Slatery III
Herbert H. Slatery III
Attorney General and Reporter
April 19, 2016
Date

Department of State Use Only

Filed with the Department of State on: 4/25/16

Effective on: 7/24/16

Tre Hargett
Tre Hargett
Secretary of State

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PUBLICATIONS

G.O.C. STAFF RULE ABSTRACT

<u>AGENCY:</u>	Board for Licensing Health Care Facilities
<u>SUBJECT:</u>	Standards for Hospitals
<u>STATUTORY AUTHORITY:</u>	Tennessee Code Annotated, Section 68-11-209
<u>EFFECTIVE DATES:</u>	July 24, 2016 through June 30, 2017
<u>FISCAL IMPACT:</u>	None
<u>STAFF RULE ABSTRACT:</u>	The rulemaking hearing rule will define the term "rural area". According to the Board, the rule clarifies which hospitals can be deemed a Critical Access Hospital (CAH).

Public Hearing Comments

One copy of a document containing responses to comments made at the public hearing must accompany the filing pursuant to T.C.A. § 4-5-222. Agencies shall include only their responses to public hearing comments, which can be summarized. No letters of inquiry from parties questioning the rule will be accepted. When no comments are received at the public hearing, the agency need only draft a memorandum stating such and include it with the Rulemaking Hearing Rule filing. Minutes of the meeting will not be accepted. Transcripts are not acceptable.

There were no comments, either written or oral.

Regulatory Flexibility Addendum

Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rule making process as described in T.C.A. § 4-5-202(a)(3) and T.C.A. § 4-5-202(a), all agencies shall conduct a review of whether a proposed rule or rule affects small businesses.

- (1) **The extent to which the rule or rules may overlap, duplicate, or conflict with other federal, state, and local governmental rules.**

This rule amendment does not overlap, duplicate, or conflict with other federal, state, and local government rules.

- (2) **Clarity, conciseness, and lack of ambiguity in the rule or rules.**

This rule amendment exhibits clarity, conciseness, and lack of ambiguity.

- (3) **The establishment of flexible compliance and/or reporting requirements for small businesses.**

This rule amendment does not create any new compliance or reporting requirements.

- (4) **The establishment of friendly schedules or deadlines for compliance and/or reporting requirements for small businesses.**

This rule amendment does not create any new compliance or reporting requirements.

- (5) **The consolidation or simplification of compliance or reporting requirements for small businesses.**

This rule amendment does not consolidate or simplify compliance or reporting requirements for small businesses.

- (6) **The establishment of performance standards for small businesses as opposed to design or operational standards required in the proposed rule.**

This rule amendment does not establish performance standards for small businesses as opposed to design or operational standards required for the proposed rule.

- (7) **The unnecessary creation of entry barriers or other effects that stifle entrepreneurial activity, curb innovation, or increase costs.**

This rule amendment does not create unnecessary barriers or other effects that stifle entrepreneurial activity, curb innovation, or increase costs.

STATEMENT OF ECONOMIC IMPACT TO SMALL BUSINESSES

Name of Board, Committee or Council: Board for Licensing Health Care Facilities
Rulemaking hearing date: 03/02/2016

- 1. Type or types of small business and an identification and estimate of the number of small businesses subject to the proposed rule that would bear the cost of, and/or directly benefit from the proposed rule:**

This rule amendment would directly affect all facilities with Critical Access Hospital (CAH) status in Tennessee, currently sixteen hospitals total. Additionally, this rule would affect employees in these facilities and the rural and senior patient population that these facilities serve. Effectively, the closure of these hospitals could also impact other Tennessee residents by adversely impacting State and local government economies.

- 2. Projected reporting, recordkeeping and other administrative costs required for compliance with the proposed rule, including the type of professional skills necessary for preparation of the report or record:**

This rule amendment will not require any additional reporting, recordkeeping or administrative costs. This definition only qualifies hospitals for CAH designation. The definition will be used by the Center for Medicare & Medicaid Services (CMS) to award such designation.

- 3. Statement of the probable effect on impacted small businesses and consumers:**

Small business and consumers in rural areas receive a great benefit from CAH designation. This hospital designation allows rural hospitals to offer a wide variety of services to rural and senior populations which they would otherwise be unable to provide. This rule amendment is necessary to allow these facilities to continue to operate under a CAH designation.

- 4. Description of any less burdensome, less intrusive or less costly alternative methods of achieving the purpose and/or objectives of the proposed rule that may exist, and to what extent, such alternative means might be less burdensome to small business:**

This rule amendment is the only way to ensure these hospitals maintain CAH status; thus, there are no less burdensome, less intrusive or less costly alternative methods of achieving the purpose or objectives of these rules.

- 5. Comparison of the proposed rule with any federal or state counterparts:**

Federal: CMS recently provided clarification on the guidance issued to state surveyors on CAH reclassification. Specifically, CMS requires CAHs demonstrate that they continuously meet the CAH designation rural location and distance criteria or provide evidence of their Necessary Provider designation status upon recertification.

CAHs located in an urban area may now only be reclassified as rural under one of the following criteria: 1) is located in a rural census tract within a Metropolitan Statistical Area (MSA) in the most recent version of the Goldsmith Modification, RUCA codes, 2) any state law or regulation deems it to be a rural hospital or located in a rural area, or 3) it meets all of the requirements of a Rural Referral Center or a Sole Community Hospital located in a rural area.

State: Other states are implementing rule amendments to ensure rural hospitals can continue to operate under CAH designation to protect the health, safety, and welfare of their rural populations.

- 6. Analysis of the effect of the possible exemption of small businesses from all or any part of the requirements contained in the proposed rule.**

These rules do not provide for exemptions regarding small businesses.

Impact on Local Governments

Pursuant to T.C.A. §§ 4-5-220 and 4-5-228 "any rule proposed to be promulgated shall state in a simple declarative sentence, without additional comments on the merits of the policy of the rules or regulation, whether the rule or regulation may have a projected impact on local governments." (See Public Chapter Number 1070 (<http://state.tn.us/sos/acts/106/pub/pc1070.pdf>) of the 2010 Session of the General Assembly)

This rule amendment is essential to maintain hospitals operating under Critical Access Hospital (CAH) designation in Tennessee as well as to retain physicians practicing in these rural areas. Without this rule, sixteen Tennessee hospitals with CAH designation will face serious financial hardship resulting in the implementation of drastic cuts to quality of care and offered services or will possibly be forced to close their facilities, thereby leaving a vulnerable rural and senior population without medical care. Additionally, this rule will prevent negative economic impact to both the State and local governments in rural areas which would result from closure of these hospitals. Four out of the sixteen hospitals are one of the top five employers in their respective county.

Additional Information Required by Joint Government Operations Committee

All agencies, upon filing a rule, must also submit the following pursuant to T.C.A. § 4-5-226(i)(1).

- (A) A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

This amendment to Rule 1200-08-01-.01 [Standards for Hospitals] adds a definition for "Rural Area," which clarifies which hospitals can be deemed a "Critical Access Hospital (CAH)."

- (B) A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

None.

- (C) Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

This rule directly affects all facilities with CAH status in Tennessee, currently sixteen hospitals total. Additionally, this rule affects employees in these facilities and the rural and senior patient population that these facilities serve. Effectively, the closure of these hospitals could also impact other Tennessee residents by adversely impacting State and local government economies.

- (D) Identification of any opinions of the attorney general and reporter or any judicial ruling that directly relates to the rule;

None.

- (E) An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency's annual budget or five hundred thousand dollars (\$500,000), whichever is less;

These rules should not result in any increase or decrease in state or local government revenues or expenditures.

- (F) Identification of the appropriate agency representative or representatives, possessing substantial knowledge and understanding of the rule;

Kyonzté Hughes-Toombs, Deputy General Counsel, Department of Health.

- (G) Identification of the appropriate agency representative or representatives who will explain the rule at a scheduled meeting of the committees;

Kyonzté Hughes-Toombs, Deputy General Counsel, Department of Health.

- (H) Office address, telephone number, and email address of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

Department of Health, Office of General Counsel, 665 Mainstream Drive, Nashville, Tennessee 37243, (615)741-1611, Kyonzté Hughes-Toombs@tn.gov.

- (I) Any additional information relevant to the rule proposed for continuation that the committee requests.

None.

**Department of State
Division of Publications**

312 Rosa L. Parks Avenue, 8th Floor Snodgrass/TN Tower
Nashville, TN 37243
Phone: 615-741-2650
Email: publications.information@tn.gov

For Department of State Use Only

Sequence Number: 04-24-16
Rule ID(s): 6185
File Date: 4/25/16
Effective Date: 7/24/16

Rulemaking Hearing Rule(s) Filing Form

Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing (Tenn. Code Ann. § 4-5-205).

Pursuant to Tenn. Code Ann. § 4-5-229, any new fee or fee increase promulgated by state agency rule shall take effect on July 1, following the expiration of the ninety (90) day period as provided in § 4-5-207. This section shall not apply to rules that implement new fees or fee increases that are promulgated as emergency rules pursuant to § 4-5-208(a) and to subsequent rules that make permanent such emergency rules, as amended during the rulemaking process. In addition, this section shall not apply to state agencies that did not, during the preceding two (2) fiscal years, collect fees in an amount sufficient to pay the cost of operating the board, commission or entity in accordance with § 4-29-121(b).

Agency/Board/Commission:	Board for Licensing Health Care Facilities
Division:	Department of Health
Contact Person:	Kyonzte Hughes-Toombs, Deputy General Counsel
Address:	665 Mainstream Drive, Nashville, Tennessee
Zip:	37243
Phone:	(615) 741-1611
Email:	Kyonzte.Hughes-Toombs@tn.gov

Revision Type (check all that apply):

☒ Amendment
☐ New
☐ Repeal

Rule(s) Revised (ALL chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please enter only **ONE** Rule Number/Rule Title per row)

Chapter Number	Chapter Title
1200-08-01	Standards for Hospitals
Rule Number	Rule Title
1200-08-01-.01	Definitions

**RULES
OF
TENNESSEE DEPARTMENT OF HEALTH
BOARD FOR LICENSING HEALTH CARE FACILITIES**

**CHAPTER 1200-08-01
STANDARDS FOR HOSPITALS**

TABLE OF CONTENTS

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1200-08-01-.07	Optional Hospital Services	1200-08-01-.15	Appendix I
1200-08-01-.08	Building Standards		

1200-08-01-.01 DEFINITIONS.

- (1) Abuse. The willful infliction of injury, unreasonable confinement, intimidation or punishment with resulting physical harm, pain or mental anguish.
- (2) Acceptable Plan of Correction. The Licensing Division shall approve a hospital's acceptable plan to correct deficiencies identified during an on-site survey conducted by the Survey Division or its designated representative. The plan of correction shall be a written document and shall provide, but not limited to, the following information:
 - (a) How the deficiency will be corrected.
 - (b) Who will be responsible for correcting the deficiency.
 - (c) The date the deficiency will be corrected.
 - (d) How the facility will prevent the same deficiency from re-occurring.
- (3) Adult. An individual who has capacity and is at least 18 years of age.
- (4) Advance Directive. An individual instruction or a written statement relating to the subsequent provision of health care for the individual, including, but not limited to, a living will or a durable power of attorney for health care.
- (5) Agent. An individual designated in an advance directive for health care to make a health care decision for the individual granting the power.
- (6) Board. The Tennessee Board for Licensing Health Care Facilities.
- (7) Capacity. An individual's ability to understand the significant benefits, risks, and alternatives to proposed health care and to make and communicate a health care decision. These regulations do not affect the right of a patient to make health care decisions while having the capacity to do so. A patient shall be presumed to have capacity to make a health care decision, to give or revoke an advance directive, and to designate or disqualify a surrogate. Any person who challenges the capacity of a patient shall have the burden of proving lack of capacity.

- (8) Cardiopulmonary Resuscitation (CPR). The administering of any means or device to support cardiopulmonary functions in a patient, whether by mechanical devices, chest compressions, mouth-to-mouth resuscitation, cardiac massage, tracheal intubation, manual or mechanical ventilators or respirations, defibrillation, the administration of drugs and/or chemical agents intended to restore cardiac and/or respiratory functions in a patient where cardiac or respiratory arrest has occurred or is believed to be imminent.
- (9) Certified Master Social Worker. A person currently certified as such by the Tennessee Board of Social Worker Certification and Licensure.
- (10) Certified Nurse Practitioner. A person who is licensed as a registered nurse and has further been issued a certificate of fitness to prescribe and/or issue legend drugs by the Tennessee Board of Nursing.
- (11) Certified Registered Nurse Anesthetist. A registered nurse currently licensed by the Tennessee Board of Nursing who is currently certified as such by the American Association of Nurse Anesthetists.
- (12) Certified Respiratory Therapist. A person currently certified as such by the Tennessee Board of Medical Examiners' Council on Respiratory Care.
- (13) Certified Respiratory Therapy Technician. A person currently certified as such by the Tennessee Board of Medical Examiners' Council on Respiratory Care.
- (14) Clinical Laboratory Improvement Act (CLIA). The federal law requiring that clinical laboratories be approved by the U.S. Department of Health and Human Services, Health Care Financing Administration.
- (15) Collaborative Practice. The implementation of the collaborative plan that outlines procedures for consultation and collaboration with other health care professional, e.g., licensed physicians and mid-level practitioners.
- (16) Collaborative Plan. The formal written plan between the mid-level practitioners and a licensed physician.
- (17) Commissioner. The Commissioner of the Tennessee Department of Health or his or her authorized representative.
- (18) Competent. A patient who has capacity.
- (19) Critical Access Hospital. A hospital located in a rural area, certified by the Department as being a necessary provider of health care services to residents of the area, which makes available twenty-four (24) hour emergency care; is a designated provider in a rural health network; provides not more than twenty-five (25) acute care inpatient beds for providing inpatient care not to exceed an annual average of ninety-six (96) hours, and has a quality assessment and performance improvement program and procedures for utilization review. If swing-bed approval has been granted, all twenty-five (25) beds can be used interchangeably for acute or Skilled Nursing Facility (SNF/swing-bed) level of care services.
- (20) Dentist. A person currently licensed as such by the Tennessee Board of Dentistry.
- (21) Department. The Tennessee Department of Health.
- (22) Designated Physician. A physician designated by an individual or the individual's agent, guardian, or surrogate, to have primary responsibility for the individual's health care or, in the

absence of a designation or if the designated physician is not reasonably available, a physician who undertakes such responsibility.

- (23) Designation. An official finding and recognition by the Department of Health that an acute care hospital meets Tennessee State Rural Health Care Plan requirements to be a Critical Access Hospital.
- (24) Dietitian. A person currently licensed as such by the Tennessee Board of Dietitian/Nutritionist Examiners. Persons exempt from licensure shall be registered with the American Dietetics Association pursuant to T.C.A. §63-25-104.
- (25) Do-Not-Resuscitate Order (DNR). A written order, other than a POST, not to resuscitate a patient in cardiac or respiratory arrest in accordance with accepted medical practices.
- (26) Electronic Signature. The authentication of a health record document or documentation in an electronic form achieved through electronic entry of an exclusively assigned, unique identification code entered by the author of the documentation.
- (27) Emancipated Minor. Any minor who is or has been married or has by court order or otherwise been freed from the care, custody and control of the minor's parents.
- (28) Emergency Responder. A paid or volunteer firefighter, law enforcement officer, or other public safety official or volunteer acting within the scope of his or her proper function under law or rendering emergency care at the scene of an emergency.
- (29) Graduate Registered Nurse Anesthetist. A registered nurse currently licensed in Tennessee who is a graduate of a nurse anesthesia educational program that is accredited by the American Association of Nurse Anesthetists' Council on Accreditation of Nurse Anesthesia Educational Programs and awaiting initial certification examination results, provided that initial certification is accomplished within eighteen (18) months of completion of an accredited nurse anesthesia educational program.
- (30) Guardian. A judicially appointed guardian or conservator having authority to make a health care decision for an individual.
- (31) Hazardous Waste. Materials whose handling, use, storage, and disposal are governed by local, state or federal regulations.
- (32) Health Care. Any care, treatment, service or procedure to maintain, diagnose, treat, or otherwise affect an individual's physical or mental condition, and includes medical care as defined in T.C.A. § 32-11-103(5).
- (33) Health Care Decision. Consent, refusal of consent or withdrawal of consent to health care.
- (34) Health Care Decision-maker. In the case of a patient who lacks capacity, the patient's health care decision-maker is one of the following: the patient's health care agent as specified in an advance directive, the patient's court-appointed guardian or conservator with health care decision-making authority, the patient's surrogate as determined pursuant to Rule 1200-08-01-.13 or T.C.A. §33-3-220, the designated physician pursuant to these Rules or in the case of a minor child, the person having custody or legal guardianship.
- (35) Health Care Institution. A health care institution as defined in T.C.A. § 68-11-1602.
- (36) Health Care Provider. A person who is licensed, certified or otherwise authorized or permitted by the laws of this state to administer health care in the ordinary course of business or practice of a profession.

- (37) Hospital. Any institution, place, building or agency represented and held out to the general public as ready, willing and able to furnish care, accommodations, facilities and equipment for the use, in connection with services of a physician or dentist, to one (1) or more nonrelated persons who may be suffering from deformity, injury or disease or from any other condition for which nursing, medical or surgical services would be appropriate for care, diagnosis or treatment. All hospitals shall provide basic hospital functions and may provide optional services as delineated in these rules. A hospital shall be designated according to its classification and shall confine its services to those classifications described below.
- (a) General Hospital. To be licensed as a general hospital, the institution shall maintain and operate organized facilities and services to accommodate one or more non-related persons for a period exceeding twenty-four (24) hours for the diagnosis, treatment or care of such persons and shall provide medical and surgical care of acute illness, injury or infirmity and obstetrical care. All diagnosis, treatment and care shall be administered by or performed under the direction of persons currently licensed to practice the healing arts in the State of Tennessee. In addition, a general hospital must specifically provide:
1. An organized staff of professional, technical and administrative personnel.
 2. A laboratory with sufficient equipment and personnel necessary to perform biochemical, bacteriological, serological and parasitological tests.
 3. X-ray facilities which shall include, as a minimum requirement, a complete diagnostic radiographic unit.
 4. A separate surgical unit which shall include, as minimum requirements, one operating room, a sterilizing room, a scrub-up area and workroom.
 5. Obstetrical facilities which shall include, as minimum requirements, one delivery room, a labor room, a newborn nursery, an isolation nursery, and patient rooms designated exclusively for obstetrical patients.
 6. An emergency department in accordance with rule 1200-08-01-.07(5) of these standards and regulations.
- (b) Satellite Hospital. A satellite hospital may be licensed with a parent hospital upon approval by the Board for Licensing Health Care Facilities when they are on separate premises and are operated under the same management.
- (c) Chronic Disease Hospital. To be licensed as a chronic disease hospital, the institution shall be devoted exclusively to the diagnosis, treatment or care of persons needing medical, surgical or rehabilitative care for chronic or long-term illness, injury, or infirmity. The diagnosis, treatment or care shall be administered by or performed under the direction of persons currently licensed to practice the healing arts in the State of Tennessee. A chronic disease hospital shall meet the requirements for a general hospital except that obstetrical facilities are not required and, if the hospital provides no surgical services, an emergency department is not required.
- (d) Orthopedic Hospital. To be licensed as an orthopedic hospital, the institution shall be devoted primarily to the diagnosis and treatment of orthopedic conditions. An orthopedic hospital shall meet the requirements for a general hospital except that obstetrical services are not required and, if the hospital provides no surgical services, an emergency department is not required.

- (e) Pediatric Hospital. To be licensed as a pediatric hospital, the institution shall be devoted primarily to the diagnosis and treatment of pediatric cases and have on staff professional personnel especially qualified in the diagnosis and treatment of the diseases of children. A pediatric hospital shall meet the requirements of a general hospital except that obstetrical facilities are not required and if the hospital provides no surgical services, an emergency department is not required.
- (f) Eye, Ear, Nose, and Throat Hospital or any one of these. To be licensed as an eye, ear, nose and throat hospital, the institution shall be devoted primarily to the diagnosis and treatment of the diseases of the eye, ear, nose, and throat. The hospital shall have on staff professional personnel especially qualified in the diagnosis and treatment of diseases of the eye, ear, nose and throat. An eye, ear, nose and throat hospital shall meet the requirements for a general hospital except that obstetrical facilities are not required and, if the hospital provides no surgical services, an emergency department is not required.
- (g) Rehabilitation Hospital. To be licensed as a rehabilitation hospital, the institution shall be devoted primarily to the diagnosis and treatment of persons requiring rehabilitative services. A rehabilitation hospital shall meet the requirement of a general hospital except that radiology services, a surgical unit, obstetrical facilities, and an emergency department are not required.
- (38) Hospitalization. The reception and care of any person for a continuous period longer than twenty-four (24) hours, for the purpose of giving advice, diagnosis, nursing service or treatment bearing on the physical health of such persons, and maternity care involving labor and delivery for any period of time.
- (39) Incompetent. A patient who has been adjudicated incompetent by a court of competent jurisdiction and has not been restored to legal capacity.
- (40) Individual instruction. An individual's direction concerning a health care decision for the individual.
- (41) Infectious Waste. Solid or liquid wastes which contain pathogens with sufficient virulence and quantity such that exposure to the waste by a susceptible host could result in an infectious disease.
- (42) Involuntary Transfer. The movement of a patient between hospitals, without the consent of the patient, the patient's legal guardian, next of kin or representative.
- (43) Justified Emergency. Includes, but is not limited to, the following events/ occurrences:
 - (a) An influx of mass casualties;
 - (b) Localized and/or regional catastrophes such as storms, earthquakes, tornadoes, etc. or,
 - (c) Epidemics or episodes of mass illness such as influenza, salmonella, etc.
- (44) Licensed Clinical Social Worker. A person currently licensed as such by the Tennessee Board of Social Workers.
- (45) Licensed Practical Nurse. A person currently licensed as such by the Tennessee Board of Nursing.

- (46) **Licensee.** The person or entity to whom the license is issued. The licensee is held responsible for compliance with all rules and regulations.
- (47) **Life Threatening Or Serious Injury.** Injury requiring the patient to undergo significant additional diagnostic or treatment measures.
- (48) **Medical Emergency.** A medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in placing the patient's health in serious jeopardy, serious impairment to bodily functions or serious dysfunction of any bodily organ or part, which includes labor when delivery is imminent, when there is inadequate time to effect safe transfer to another hospital prior to delivery, or when a transfer may pose a threat to the health and safety of the patient or the unborn child.
- (49) **Medical Record.** Medical histories, records, reports, summaries, diagnoses, prognoses, records of treatment and medication ordered and given, entries, x-rays, radiology interpretations, and other written electronics, or graphic data prepared, kept, made or maintained in a facility that pertains to confinement or services rendered to patients admitted or receiving care.
- (50) **Medical Staff.** An organized body composed of individuals appointed by the hospital governing board that operates under bylaws approved by the governing body and is responsible for the quality of medical care provided to patients by the hospital. All members of the medical staff shall be licensed to practice in Tennessee, with the exception of interns and residents.
- (51) **Medically Inappropriate Treatment.** Resuscitation efforts that cannot be expected either to restore cardiac or respiratory function to the patient or other medical or surgical treatments to achieve the expressed goals of the informed patient. In the case of the incompetent patient, the patient's representative expresses the goals of the patient.
- (52) **Member of the Professional Medical Community.** A professional employed by the hospital and on the premises at the time of a voluntary delivery.
- (53) **Mid-Level Practitioner.** Either a certified nurse practitioner or a physician assistant.
- (54) **Misappropriation of Patient/Resident Property.** The deliberate misplacement, exploitation or wrongful, temporary or permanent use of an individual's belongings or money without the individual's consent.
- (55) **Neglect.** The failure to provide goods and services necessary to avoid physical harm, mental anguish or mental illness; however, the withholding of authorization for or provision of medical care to any terminally ill person who has executed an irrevocable living will in accordance with the Tennessee Right to Natural Death Law, or other applicable state law, if the provision of such medical care would conflict with the terms of the living will, shall not be deemed "neglect" for purposes of these rules.
- (56) **N.F.P.A.** The National Fire Protection Association.
- (57) **Nuclear Medicine Technologist.** A person currently registered as such by the National Association for Nuclear Medicine Technology.
- (58) **Nurse Midwife.** A person currently licensed by the Tennessee Board of Nursing as a registered nurse (R.N.) and qualified to deliver midwifery services or certified by the American College of Nurse-Midwives.

- (59) Occupational Therapist. A person currently certified as such by the Tennessee Board of Occupational and Physical Therapy Examiners.
- (60) Occupational Therapy Assistant. A person currently certified as such by the Tennessee Board of Occupational and Physical Therapy Examiners.
- (61) Optometrist. A person currently licensed as such by the Tennessee Board of Optometry.
- (62) Patient. Includes but is not limited to any person who is suffering from an acute or chronic illness or injury or who is crippled, convalescent or infirm, or who is in need of obstetrical, surgical, medical, nursing or supervisory care.
- (63) Person. An individual, corporation, estate, trust, partnership, association, joint venture, government, governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.
- (64) Personally Informing. A communication by any effective means from the patient directly to a health care provider.
- (65) Pharmacist. A person currently licensed as such by the Tennessee Board of Pharmacy.
- (66) Physical Therapist. A person currently certified as such by the Tennessee Board of Occupational and Physical Therapy Examiners.
- (67) Physical Therapy Assistant. A person currently certified as such by the Tennessee Board of Occupational and Physical Therapy Examiners.
- (68) Physician. An individual authorized to practice medicine or osteopathy under Tennessee Code Annotated, Title 63, Chapters 6 or 9.
- (69) Physician Assistant. A person who has graduated from a physician assistant educational program accredited by the Accreditation Review Commission on Education for the Physician Assistant, has passed the Physician Assistant National Certifying Examination, and is currently licensed in Tennessee as a physician assistant under title 63, chapter 19.
- (70) Physician Orders for Scope of Treatment or POST. Written orders that:
 - (a) Are on a form approved by the Board for Licensing Health Care Facilities;
 - (b) Apply regardless of the treatment setting and that are signed as required herein by the patient's physician, physician assistant, nurse practitioner, or clinical nurse specialist; and
 - (c)
 - 1. Specify whether, in the event the patient suffers cardiac or respiratory arrest, cardiopulmonary resuscitation should or should not be attempted;
 - 2. Specify other medical interventions that are to be provided or withheld; or
 - 3. Specify both 1 and 2.
- (71) Podiatrist. A person currently licensed as such by the Tennessee Board of Registration in Podiatry.
- (72) Power of Attorney for Health Care. The designation of an agent to make health care decisions for the individual granting the power under T.C.A. Title 34, Chapter 6, Part 2.

- (73) Psychologist. A person currently licensed as such by the Tennessee Board of Examiners in Psychology.
- (74) Qualified Emergency Medical Service Personnel. Includes, but shall not be limited to, emergency medical technicians, paramedics, or other emergency services personnel, providers, or entities acting within the usual course of their professions, and other emergency responders.
- (75) Radiological Technologist. A person currently registered as such by the American Society of Radiological Technologists.
- (76) Reasonably Available. Readily able to be contacted without undue effort and willing and able to act in a timely manner considering the urgency of the patient's health care needs. Such availability shall include, but not be limited to, availability by telephone.
- (77) Registered Health Information Administrator (RHIA). A person currently registered as such by the American Health Information Management Association.
- (78) Registered Health Information Technician (RHIT). A person currently accredited as such by the American Health Information Management Association.
- (79) Registered Nurse. A person currently licensed as such by the Tennessee Board of Nursing.
- (80) Rural Area. A county classified by the federal Office of Management and Budget (OMB) as rural, all counties, excluding Davidson, Hamilton, Knox, and Shelby, currently defined as rural in Chapter 1200-20-11 of the Tennessee Comprehensive Rules and Regulations, or an area outside of a county or part of a county previously classified as rural by the OMB and reclassified by the OMB as a metropolitan statistical area as of June 6, 2003.
- (81)(80) Satellite Hospital. A freestanding hospital licensed with a parent hospital that is on separate premises and operated under the same management.
- (82)(81) Shall or Must. Compliance is mandatory.
- (83)(82) Social Worker. A person who has at least a bachelor's degree in Social Work or related field, and preferably, two (2) years medical social work or other community based work experience.
- (84)(83) Stabilize. To provide such medical treatment of the emergency medical condition as may be necessary to assure, within reasonable medical probability, that the condition will not materially deteriorate due to the transfer as determined by a physician or other qualified medical personnel when a physician is not readily available.
- (85)(84) State. A state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a territory or insular possession subject to the jurisdiction of the United States.
- (86)(85) Student. A person currently enrolled in a course of study that is approved by the appropriate licensing board.
- (87)(86) Supervising Health Care Provider. The designated physician or, if there is no designated physician or the designated physician is not reasonably available, the health care provider who has undertaken primary responsibility for an individual's health care.

~~(88)~~(87) **Surgical Technologist.** A person who works under supervision to facilitate the safe and effective conduct of invasive surgical procedures. This individual is usually employed by a hospital, medical office, or surgical center and supervised during the surgical procedure according to institutional policy and procedure to assist in providing a safe operating room environment that maximizes patient safety by performing certain tasks including, but not limited to:

- (a) Preparation of the operating room and the sterile field for surgical procedures by preparing sterile supplies, instruments, and equipment using sterile technique;
- (b) Preparation of the operating room for surgical procedures by ensuring that surgical equipment is functioning properly and safely; and
- (c) Passing instruments, equipment or supplies to a surgeon, sponging or suctioning an operative site, preparing and cutting suture material, holding retractors, transferring but not administering fluids or drugs, assisting in counting sponges, needles, supplies, and instruments, and performing other similar tasks as directed during a surgical procedure.

~~(89)~~(88) **Surrogate.** An individual, other than a patient's agent or guardian, authorized to make a health care decision for the patient.

~~(90)~~(89) **Transfer.** The movement of a patient between hospitals at the direction of a physician or other qualified medical personnel when a physician is not readily available but does not include such movement of a patient who leaves the facility against medical advice. The term does not apply to the commitment and movement of mentally ill and mentally retarded persons and does not apply to the discharge or release of a patient no longer in medical need of hospital care or to a hospital's refusal, after an appropriate medical screening, to render any medical care on the grounds that the person does not have a medical need for hospital care.

~~(91)~~(90) **Treating Health Care Provider.** A health care provider who at the time is directly or indirectly involved in providing health care to the patient.

~~(92)~~(91) **Treating Physician.** The physician selected by or assigned to the patient and who has the primary responsibility for the treatment and care of the patient. Where more than one physician shares such responsibility, any such person may be deemed to be the "treating physician."

~~(93)~~(92) **Voluntary Delivery.** The action of a mother in leaving an unharmed infant aged seventy-two (72) hours or younger on the premises of a hospital with any hospital employee or member of the professional medical community without expressing any intention to return for such infant, and failing to visit or seek contact with such infant for a period of thirty (30) days thereafter.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 39-11-106, 68-11-202, 68-11-204, 68-11-207, 68-11-209, 68-11-210, 68-11-211, 68-11-213, 68-11-224, 68-11-255, 68-11-1802, 68-57-101, 68-57-102, and 68-57-105.

Administrative History: Original rule certified June 7, 1974. Amendment filed April 3, 1974; effective May 3, 1974. Amendment filed November 30, 1984; effective December 30, 1984. Repeal and new rule filed May 22, 1986; effective June 21, 1986. Amendment filed April 26, 1996; effective July 8, 1996. Amendment filed November 30, 1999; effective February 6, 2000. Repeal, except for Paragraphs (1), (5), (8), (10), (11), (13), (16), (29) and (37) as promulgated February 6, 2000, and new rule filed March 18, 2000; effective May 30, 2000. Amendment filed April 17, 2000; effective July 1, 2000. Amendment filed September 17, 2002; effective December 1, 2002. Amendment filed April 11, 2003; effective June 25, 2003. Amendment filed April 28, 2003; effective July 12, 2003. Amendment filed August 27, 2004; effective November 10, 2004. Amendments filed September 6, 2005; effective November 20, 2005. Amendment filed February 23, 2006; effective May 9, 2006. Amendment filed February 7, 2007; effective

April 23, 2007. Amendment filed February 22, 2010; effective May 23, 2010. Amendments filed March 18, 2010; effective June 16, 2010. Amendment filed January 3, 2012; effective April 2, 2012. Amendment filed March 27, 2015; effective June 25, 2015.

* If a roll-call vote was necessary, the vote by the Agency on these rulemaking hearing rules was as follows:

Board Member	Aye	No	Abstain	Absent	Signature (if required)
Carissa S. Lynch, Pharm.D.				X	
Michael R. Miller				X	
Renee Saunders, M.D.				X	
Thomas Gee	X				
John A. Marshall	X				
Jennifer Gordon-Maloney, DDS				X	
Kenneth R. Robertson, M.D.	X				
Sherry Robbins, M.D.	X				
Annette Marlar	X				
Robert C. Breeden	X				
Roger L. Mynatt	X				
Janet Williford	X				
David Rhodes	X				
Joshua A. Crisp	X				
Paul Boyd				X	
Bobby Wood	X				
Jim Shulman	X				
Vacant					

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Board for Licensing Health Care Facilities (board/commission/ other authority) on 03/02/2016 (mm/dd/yyyy), and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 01/05/16 (mm/dd/yy)

Rulemaking Hearing(s) Conducted on: (add more dates). 03/02/16 (mm/dd/yy)

Date: 4/11/16

Signature: Kyonte Hughes-Tooomb

Name of Officer: Kyonte Hughes-Tooomb

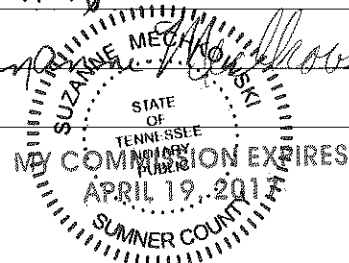
Deputy General Counsel

Title of Officer: Department of Health

Subscribed and sworn to before me on: 4-11-16

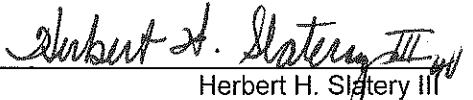
Notary Public Signature: Suzanne M. McElhiney

My commission expires on: APRIL 19, 2017



Board for Licensing Health Care Facilities Rules
Rule 1200-08-01-.01
Standards for Hospitals
Definitions

All rulemaking hearing rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.


Herbert H. Slatery III
Attorney General and Reporter

April 19, 2016
Date

Department of State Use Only

Filed with the Department of State on: 4/25/16

Effective on: 7/24/16


Tre Hargett
Secretary of State

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G.O.C. STAFF RULE ABSTRACT

AGENCY: Department of Labor and Workforce Development,
Division of Occupational Safety and Health

SUBJECT: Occupational Safety and Health

STATUTORY AUTHORITY: Tennessee Code Annotated, Section 50-3-201

EFFECTIVE DATES: July 13, 2016 through June 30, 2017

FISCAL IMPACT: None

STAFF RULE ABSTRACT:

Rule 0800-01-01. The proposed rules will adopt and reference the most recent occupational safety and health standards and exceptions for general industry, if any, in the federal regulations. According to the Department, there have not been any substantive changes to the standards.

Rule 0800-01-06. The proposed rules will adopt and reference the most recent occupational safety and health standards and exceptions for construction, if any, in the federal regulations. According to the Department, there have not been any substantive changes to the standards.

Rule 0800-01-07. The proposed rules will adopt and reference the most recent occupational safety and health standards and exceptions for agriculture, if any, in the federal regulations. According to the Department, there have not been any substantive changes to the standards.

Impact on Local Governments

Pursuant to T.C.A. §§ 4-5-220 and 4-5-228 "any rule proposed to be promulgated shall state in a simple declarative sentence, without additional comments on the merits of the policy of the rules or regulation, whether the rule or regulation may have a projected impact on local governments." (See Public Chapter Number 1070 (<http://state.tn.us/sos/acts/106/pub/pc1070.pdf>) of the 2010 Session of the General Assembly)

This rule does not have a projected impact on local governments.

Regulatory Flexibility Addendum

Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rule making process as described in T.C.A. § 4-5-202(a)(3) and T.C.A. § 4-5-202(a), all agencies shall conduct a review of whether a proposed rule or rule affects small businesses.

An economic impact statement regarding the amendments in this rule proposal is not required under the provisions of the Regulatory Flexibility Act of 2007. As stated in Section 6 of Public Chapter 464, "This part shall not apply to rules that are adopted on an emergency or public necessity basis under Title 4, Chapter 5, Part 2, that are federally mandated, or that substantially codify existing state or federal law." Under the statutory authority of 29 U.S.C. § 667, Tennessee has an approved state plan that provides for the development and enforcement of occupational safety and health standards. In accordance with the Tennessee Occupational Safety and Health State Plan, when a federal occupational safety and health standard is promulgated under 29 U.S.C. § 655 Tennessee generally adopts the federal standard relating to the same issue. The plan specifies that the state of Tennessee will adopt the federal standards or an equivalent state requirement within six (6) months of the standard's promulgation by federal OSHA. In addition, T.C.A. §50-3-201 authorizes the Commissioner of Labor and Workforce Development to adopt either state or federal occupational safety and health standards.

Additional Information Required by Joint Government Operations Committee

All agencies, upon filing a rule, must also submit the following pursuant to T.C.A. § 4-5-226(i)(1).

- (A) A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

Rules 0800-01-01-.06, 0800-01-06-.02, 0800-01-07-.01 and 0800-01-07-.02 are amended in order to adopt and reference the latest occupational safety and health standards and exceptions, if any, in the applicable parts of Title 29, Code of Federal Regulations when published in the Federal Register. Since the last amendments to the rules there have been no substantive changes to the Occupational Safety and Health Standards.

- (B) A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

Under the statutory authority of 29 U.S.C. § 667, Tennessee has an approved state plan that provides for the development and enforcement of occupational safety and health standards. In accordance with the plan, when a federal occupational safety and health standard is promulgated under 29 U.S.C. § 655 Tennessee generally adopts the federal standard relating to the same issue. When a federal standard is not adopted, it is referenced as an exception in the rules. The statutory authority for promulgation of the rules by the Commissioner of Labor and Workforce Development is T.C.A. § 50-3-201.

- (C) Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

All persons subject to T.C.A. §§ 50-3-101 et seq. are directly affected by the rules in Chapters 0800-01-01, 0800-01-06 and 0800-01-07. These rules provide for the effective administration and enforcement of the occupational safety and health standards required by the state plan. Employees and employers including governmental entities in the state must comply with the rules promulgated pursuant to federal and state law. It appears that there are no objections to the proposed amendments to the rules since no inquiries have been made.

- (D) Identification of any opinions of the attorney general and reporter or any judicial ruling that directly relates to the rule;

There have been no Attorney General opinions or judicial rulings relevant to these rules.

- (E) An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency's annual budget or five hundred thousand dollars (\$500,000), whichever is less;

There are no anticipated increases or decreases in state and local government revenues and expenditures resulting from promulgation of the proposed rules and amendments to the existing rules.

- (F) Identification of the appropriate agency representative or representatives, possessing substantial knowledge and understanding of the rule;

- (G) Identification of the appropriate agency representative or representatives who will explain the rule at a scheduled meeting of the committees;

Larry Hunt, Manager, Standards & Procedures, Division of Occupational Safety and Health, is the agency representative most knowledgeable about these rules.

- (H) Office address, telephone number, and email address of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

Tennessee Department of Labor and Workforce Development
Division of Occupational Safety and Health
220 French Landing Drive
Nashville, TN 37243-1002
(615) 741-7036
email: larry.hunt@tn.gov

- (I) Any additional information relevant to the rule proposed for continuation that the committee requests.

**Department of State
Division of Publications**

312 Rosa L. Parks Avenue, 8th Floor Snodgrass/TN Tower
Nashville, TN 37243
Phone: 615-741-2650
Fax: 615-741-5133
Email: register.information@tn.gov

For Department of State Use Only

Sequence Number: 04-09-16

Rule ID(s): 6177 - 6179

File Date: 4/14/16

Effective Date: 7/13/16

Proposed Rule(s) Filing Form

Proposed rules are submitted pursuant to T.C.A. §§ 4-5-202, 4-5-207 in lieu of a rulemaking hearing. It is the intent of the Agency to promulgate these rules without a rulemaking hearing unless a petition requesting such hearing is filed within sixty (60) days of the first day of the month subsequent to the filing of the proposed rule with the Secretary of State. To be effective, the petition must be filed with the Agency and be signed by twenty-five (25) persons who will be affected by the amendments, or submitted by a municipality which will be affected by the amendments, or an association of twenty-five (25) or more members, or any standing committee of the General Assembly. The agency shall forward such petition to the Secretary of State.

Agency/Board/Commission:	Department of Labor and Workforce Development
Division:	Division of Occupational Safety and Health
Contact Person:	Larry Hunt
Address:	220 French Landing Drive
Zip:	37243-1002
Phone:	(615) 741-7036
Email:	Larry.Hunt@tn.gov

Revision Type (check all that apply):

- ☒ Amendment
☐ New
☐ Repeal

Rule(s) Revised (ALL chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please enter only **ONE Rule Number/Rule Title per row)**

Chapter Number	Chapter Title
0800-01-01	Occupational Safety and Health Standards for General Industry
Rule Number	Rule Title
0800-01-01-.05	Applicability of Standards
0800-01-01-.06	Adoption and Citation of Federal Standards

Chapter Number	Chapter Title
0800-01-06	Occupational Safety and Health Standards for Construction
Rule Number	Rule Title
0800-01-06-.02	Adoption and Citation of Federal Standards

Chapter Number	Chapter Title
0800-01-07	Occupational Safety and Health Standards for Agriculture
Rule Number	Rule Title
0800-01-07-.01	Adoption and Citation of Federal Standards
0800-01-07-.02	Exceptions to Adoption of Federal Standards

Proposed Amendments with Changes Red-Lined

Chapter 0800-01-01

Rule 0800-01-01-.05 Amended

Paragraph (2)(e) and (2)(f) of Rule 0800-01-01-.05 Applicability of Standards is amended by adding "; and" to the end of paragraph (2)(e) and changing the text of paragraph (2)(f) to "RESERVED".

Existing Rule:

- (e) Domestic workers;
- (f) Employees covered by the Longshoremen's and Harbor Workers' Compensation Act, as amended (33 USC §§ 901-950); and

Proposed Amended Rule:

- (e) Domestic workers; and
- (f) RESERVED

Rule 0800-01-01-.06 Amended

Paragraph (2) of Rule 0800-01-01-.06 Adoption and Citation of Federal Standards is amended by changing the date from "January 1, 2016" to "July 1, 2016".

Existing Rule:

- (2) The Commissioner of Labor and Workforce Development adopts the federal occupational safety and health standards codified in Title 29, Code of Federal Regulations, Part 1910, as of January 1, 2016 except as provided in Rule 0800-01-01-.07 of this chapter.

Proposed Amended Rule:

- (2) The Commissioner of Labor and Workforce Development adopts the federal occupational safety and health standards codified in Title 29, Code of Federal Regulations, Part 1910, as of July 1, 2016 except as provided in Rule 0800-01-01-.07 of this chapter.

Authority: T.C.A. §§ 4-3-1411 and 50-3-201.

Chapter 0800-01-06

Rule 0800-01-006-.02 Amended

Paragraph (2) of Rule 0800-01-06-.02 Adoption and Citation of Federal Standards is amended by changing the date from "January 1, 2016" to "July 1, 2016".

Existing Rule:

- (2) The Commissioner of Labor and Workforce Development adopts the federal occupational safety and health standards codified in Title 29, Code of Federal

Regulations, Part 1926, as of ~~January 1, 2016~~ except as provided in Rule 0800-01-06-.03 of this chapter.

Proposed Amended Rule:

- (2) The Commissioner of Labor and Workforce Development adopts the federal occupational safety and health standards codified in Title 29, Code of Federal Regulations, Part 1926, as of July 1, 2016 except as provided in Rule 0800-01-06-.03 of this chapter.

Authority: T.C.A. §§ 4-3-1411, 50-3-103 and 50-3-201.

Chapter 0800-01-07

Rule 0800-01-07-.01 Amended

Paragraph (2) of Rule 0800-01-07-.01 Adoption and Citation of Federal Standards is amended by changing the date from "January 1, 2016" to "July 1, 2016".

Existing Rule:

- (2) The Commissioner of Labor and Workforce Development adopts the federal occupational safety and health standards codified in Title 29, Code of Federal Regulations, Part 1928, as of ~~January 1, 2016~~ except as provided in Rule 0800-01-07-.02 of this chapter.

Proposed Amended Rule:

- (2) The Commissioner of Labor and Workforce Development adopts the federal occupational safety and health standards codified in Title 29, Code of Federal Regulations, Part 1928, as of July 1, 2016 except as provided in Rule 0800-01-07-.02 of this chapter.

Authority: T.C.A. §§4-3-1411 and 50-3-201.

Rule 0800-01-07-.02 Amended

Paragraph (1) of Rule 0800-01-07-.02 Exceptions to Adoption of Federal Standards in 29 CFR Part 1928 is amended by changing the date from "January 1, 2016" to "July 1, 2016".

Existing Rule:

- (1) As of ~~January 1, 2016~~, there are no exceptions.

Proposed Amended Rule:

- (1) As of July 1, 2016, there are no exceptions.

Authority: T.C.A. §§4-3-1411 and 50-3-201.

* If a roll-call vote was necessary, the vote by the Agency on these rules was as follows:

Board Member	Aye	No	Abstain	Absent	Signature (if required)

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the (board/commission/other authority) on 3/14/16 (date as mm/dd/yyyy), and is in compliance with the provisions of T.C.A. § 4-5-222. The Secretary of State is hereby instructed that, in the absence of a petition for proposed rules being filed under the conditions set out herein and in the locations described, he is to treat the proposed rules as being placed on file in his office as rules at the expiration of sixty (60) days of the first day of the month subsequent to the filing of the proposed rule with the Secretary of State.

Date:

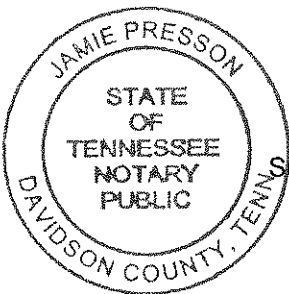
Signature:

Name of Officer:

Burns Phillips

Title of Officer:

Commissioner of Labor and Workforce Development



Subscribed and sworn to before me on:

Notary Public Signature:

My commission expires on:

All proposed rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.

Herbert H. Slatery III
Herbert H. Slatery III
Attorney General and Reporter
4/11/2016
Date

Department of State Use Only

Filed with the Department of State on:

Effective on:

Tre Hargett
Tre Hargett
Secretary of State

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PUBLICATIONS

G.O.C. STAFF RULE ABSTRACT

<u>AGENCY:</u>	Elevator and Amusement Device Safety Board
<u>SUBJECT:</u>	Limited Use/Limited Application Elevators
<u>STATUTORY AUTHORITY:</u>	Tennessee Code Annotated, Section 68-121-103
<u>EFFECTIVE DATES:</u>	July 21, 2016 through June 30, 2017
<u>FISCAL IMPACT:</u>	None
<u>STAFF RULE ABSTRACT:</u>	<p>The proposed rules will make certain safety standards approved by the American Society of Mechanical Engineers and the American National Standards Institute applicable to limited use/limited application elevators in this state. According to the Board, the effect of the rules will be to reduce the cost to business owners who own or lease buildings with multiple stories by allowing elevator contractors to install limited space disabled lifts without requiring the owner to seek a variance from the Board. According to the Board, the rules will make it easier for business owners to comply with the Americans with Disabilities Act.</p>

Regulatory Flexibility Addendum

Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rule making process as described in T.C.A. § 4-5-202(a)(3) and T.C.A. § 4-5-202(a), all agencies shall conduct a review of whether a proposed rule or rule affects small businesses.

(If applicable, insert Regulatory Flexibility Addendum here)

This proposed rule change reduces the cost to business owners who own or lease buildings with multiple stories by allowing Elevator contractors to install limited space disabled lifts without requiring the owner to seek a variance from the Tennessee Elevator and Amusement Device Safety Board. Therefore, this proposed rule change makes it easier for a business owner to achieve compliance with the Americans with Disabilities Act (ADA).

Impact on Local Governments

Pursuant to T.C.A. §§ 4-5-220 and 4-5-228 "any rule proposed to be promulgated shall state in a simple declarative sentence, without additional comments on the merits of the policy of the rules or regulation, whether the rule or regulation may have a projected impact on local governments." (See Public Chapter Number 1070 (<http://state.tn.us/sos/acts/106/pub/pc1070.pdf>) of the 2010 Session of the General Assembly)

This proposed rule change will not have an impact on local governments.

Additional Information Required by Joint Government Operations Committee

All agencies, upon filing a rule, must also submit the following pursuant to T.C.A. § 4-5-226(i)(1).

- (A) A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

This proposed rule change reduces the cost to business owners who own or lease buildings with multiple stories by allowing Elevator contractors to install limited space disabled lifts without requiring the owner to seek a variance from the Tennessee Elevator and Amusement Device Safety Board. Therefore, this proposed rule change makes it easier for a business owner to achieve compliance with the Americans with Disabilities Act (ADA).

- (B) A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

There are no federal or state laws mandating promulgation of this proposed rule change.

- (C) Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

Any person or entity owning or leasing a building with multiple stories will be affected by this proposed rule change and all such persons or entities who have commented on this proposed rule change urge adoption of this rule change.

- (D) Identification of any opinions of the attorney general and reporter or any judicial ruling that directly relates to the rule;

The Division is not aware of any Opinions of the Attorney General and Reporter or any judicial rulings that directly relate to this proposed rule change.

- (E) An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency's annual budget or five hundred thousand dollars (\$500,000), whichever is less;

This proposed rule change will have no effect on state and local government revenues and expenditures.

- (F) Identification of the appropriate agency representative or representatives, possessing substantial knowledge and understanding of the rule;

Tennessee Department of Labor and Workforce Development, Division of Workplace Regulations and Compliance, Elevator Unit Supervisor Chris Farmer and Legal Counsel for the Elevator/Amusement Device Board Dan Bailey have substantial knowledge and understanding of this proposed rule change.

- (G) Identification of the appropriate agency representative or representatives who will explain the rule at a scheduled meeting of the committees;

Chris Farmer and Dan Bailey identified in response to (F) above will explain the rule at a scheduled meeting of the committee.

- (H) Office address, telephone number, and email address of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

Chris Farmer, Tennessee Department of Labor and Workforce Development, Division of Workplace Regulations and Compliance, Elevator/Amusement Device Unit, 220 French Landing Drive, Nashville, TN 37243, 615-253-1375, christopher.farmer@tn.gov; and Dan Bailey, same address, 615-741-9550, daniel.a.bailey@tn.gov.

(I) Any additional information relevant to the rule proposed for continuation that the committee requests.

Any additional information that the Committee requests will be provided.
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**Department of State
Division of Publications**

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Nashville, TN 37243
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For Department of State Use Only

Sequence Number: 04-15-16
Rule ID(s): 6183
File Date: 4/22/16
Effective Date: 7/21/16

Proposed Rule(s) Filing Form

Proposed rules are submitted pursuant to Tenn. Code Ann. §§ 4-5-202, 4-5-207, and 4-5-229 in lieu of a rulemaking hearing. It is the intent of the Agency to promulgate these rules without a rulemaking hearing unless a petition requesting such hearing is filed within ninety (90) days of the filing of the proposed rule with the Secretary of State. To be effective, the petition must be filed with the Agency and be signed by ten (10) persons who will be affected by the amendments, or submitted by a municipality which will be affected by the amendments, or an association of ten (10) or more members, or any standing committee of the General Assembly. The agency shall forward such petition to the Secretary of State.

Pursuant to Tenn. Code Ann. § 4-5-229, any new fee or fee increase promulgated by state agency rule shall take effect on July 1, following the expiration of the ninety (90) day period as provided in § 4-5-207. This section shall not apply to rules that implement new fees or fee increases that are promulgated as emergency rules pursuant to § 4-5-208(a) and to subsequent rules that make permanent such emergency rules, as amended during the rulemaking process. In addition, this section shall not apply to state agencies that did not, during the preceding two (2) fiscal years, collect fees in an amount sufficient to pay the cost of operating the board, commission or entity in accordance with § 4-29-121(b).

Agency/Board/Commission:	Elevator & Amusement Device Safety Board
Division:	Workplace Regulations and Compliance Division
Contact Person:	Chris Farmer
Address:	220 French Landing Drive, Nashville, Tennessee
Zip:	37243-1002
Phone:	615-253-1375
Email:	Christopher.farmer@tn.gov

Revision Type (check all that apply):

- ☒ Amendment
☐ New
☐ Repeal

Rule(s) Revised (ALL chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please enter only **ONE Rule Number/Rule Title per row)**

Chapter Number	Chapter Title
0800-03-04	Elevators, Dumbwaiters, Escalators, Aerial Passenger Tramways, Moving Walks, and Amusement Devices
Rule Number	Rule Title
0800-03-04-.02	Definitions

Chapter Number	Chapter Title
Rule Number	Rule Title

**RULES
OF
TENNESSEE DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT
DIVISION OF BOILER, ELEVATOR AND AMUSEMENT DEVICE INSPECTION
ELEVATOR AND AMUSEMENT DEVICE SAFETY BOARD**

**CHAPTER 0800-03-04
ELEVATORS, DUMBWAITERS, ESCALATORS, AERIAL PASSENGER TRAMWAYS,
MOVING WALKS, AND AMUSEMENT DEVICES**

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0800-03-04-.04	Design, Installation, and Alterations	0800-03-04-.19	Motion Restriction and Other Specific Hazard Control Measures
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0800-03-04-.11	Adoption of Elevator Safety Code Amendments and Interpretations	0800-03-04-.26	Charges for Copies of Public Records
0800-03-04-.12	Application		
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0800-03-04-.14	General Design and Manufacture		
0800-03-04-.15	Required Testing		

0800-03-04-.01 SCOPE.

- (1) These rules establish administrative and operational procedures for implementation of T.C.A. §68-121-101 et seq. These rules also establish minimum standards for the operation, maintenance, construction, alteration and installation of elevators, dumbwaiters, escalators, aerial passenger tramways, and moving walks. Further, these rules establish minimum standards for the installation, assembly, disassembly, repair, maintenance, use, testing, operation, and inspection of amusement devices.

Authority: T.C.A. §§68-121-103(e), 68-121-104(c), and 68-121-116. **Administrative History:** Original rule filed February 24, 2010; effective July 29, 2010.

0800-03-04-.02 DEFINITIONS.

- (1) As-Built Document. A document signed by a licensed engineer responsible for the construction of an amusement device stating that the device has been constructed according to its final plans.
- (2) ASTM Standard. The latest standards and specifications set forth by the American Society for Testing Materials. Copies can be purchased from ASTM International, 100 Barr Harbor Drive, PO BOX C700, West Conshohocken, PA 19428-2959, United States, 610-832-9585 (phone), 610-832-9555 (fax), service@astm.org (email), www.astm.org (ASTM web site).
- (3) Authorized Person. A person who:
 - (a) Has been authorized by the owner or managing operator, in a determination which defines the specific duties and amusement devices to which the authorization pertains, to attend, operate, inspect, test, or perform maintenance on amusement devices and associated equipment;

- (b) Has successfully completed training in the duties to which the authorization pertains;
 - (c) Performs his or her duties within the scope of the authorization; and
 - (d) Is capable of reading and comprehending all written instructions, including those on device operator controls, that are required to be available to or to be in view of a person performing duties within the scope of the authorization.
- (4) DIN Standard. A standard published by the Deutsches Institute of Normung.
 - (5) Elevator, dumbwaiter, escalator, and other lift. Hoisting and lowering mechanisms as defined in Section 1.3 of the Elevator Safety Code.
 - (6) Existing Amusement Device. Any existing amusement device that was placed in operation, substantially designed, manufactured, or fabricated prior to the effective date of these rules.
 - (7) Major Modification. Any change in the structure or operation of an amusement device that materially alters either the performance of the device or any safety-related system of the device.
 - (8) New Amusement Device. An amusement device that is placed in operation and opened to the public for the first time.
 - (9) New Installation. Any new installation of elevators, dumbwaiters, escalators, or other lifts as defined in Section 1.3 Definitions of the Elevator Safety Code for which the plans and specifications and the application for the construction permit are filed as required by T.C.A. §68-121-108.
 - (10) Other Terms. All other terms used in this Chapter shall have the meaning as defined by Section 1.3 of the Elevator Safety Code, and Section 1.4 of the Safety Code for Existing Elevators and Escalators.
 - (11) Red Tag. A notice and order prohibiting the use of an amusement device, or any such device that restricts access to any particular part of any amusement device.
 - (12) Safety-Related Systems and Procedures. Systems and procedures that materially affect safety or are designed or intended to increase the safety of an amusement device, including, but not limited to:
 - (a) Control devices, including safety devices;
 - (b) Speed limiting devices;
 - (c) Brakes;
 - (d) Passenger-carrying devices, including restraint systems;
 - (e) Mechanical systems that materially affect the safe operation of the device;
 - (f) Amusement device electrical or electronic systems, including process-control equipment that are designed or intended to ensure safe operation of the amusement device;
 - (g) Daily pre-operational safety-related tests;

- (h) Owner or managing operator safety-related maintenance, inspection and operational activities;
 - (i) Emergency procedures related to the operation of the device, including, but not limited to, cessation of operation, evacuation procedures, ingress and egress controls, location of communication devices, and summoning of medical or emergency assistance; and
 - (j) Signage.
- (13) The Elevator Safety Code. The Safety Code for Elevators and Escalators, ASME A17.1 – 2010/CSA B44-10, Nineteenth Edition, approved by the American National Standards Institute on October 19, 2010, effective as of June 30, 2011, ASME A17.6—2010, approved by the American National Standards Institute on March 17, 2010, effective as of July 30, 2010, prepared and published by The American Society of Mechanical Engineers, except as modified in subparagraphs (a) through (sq) shall be considered a part of this Chapter.
- (a) The note in Requirement 2.11.1.3 Telephone as Alternative to Emergency Doors shall read as follows: Examples are pulp mills, grain elevators and dams;
 - (b) Section 4.3 Hand Elevators is deleted in its entirety;
 - ~~(c)~~ Section 5.2 Limited-Use/Limited-Application Elevators is deleted in its entirety;
 - ~~(d)~~(c) Section 5.3 Private Residence Elevators is deleted in its entirety;
 - ~~(e)~~(d) Section 5.4 Private Residence Inclined Elevators is deleted in its entirety;
 - ~~(f)~~(e) Section 5.8 Shipboard Elevators is deleted in its entirety;
 - ~~(g)~~(f) Section 5.9 Mine Elevators is deleted in its entirety;
 - ~~(h)~~(g) Section 7.4 Material Lifts Without Automatic Transfer Devices is deleted in its entirety;
 - ~~(i)~~(h) Section 7.5 Electric Material Lifts Without Automatic Transfer Devices is deleted in its entirety;
 - ~~(j)~~(i) Section 7.6 Hydraulic Material Lifts Without Automatic Transfer Devices is deleted in its entirety;
 - ~~(k)~~(j) Section 7.9 Electric Material Lifts With Automatic Transfer Devices is deleted in its entirety;
 - ~~(l)~~(k) Section 7.10 Hydraulic Material Lifts With Automatic Transfer Devices is deleted in its entirety;
 - ~~(m)~~(l) Section 7.11 Material Lifts With Obscured Transfer Devices is deleted in its entirety;
 - ~~(n)~~ Requirement 8.6.7.2 Limited-Use/Limited-Application Elevators is deleted in its entirety;
 - ~~(o)~~(m) Requirement 8.6.7.3 Private Residence Elevators is deleted in its entirety;
 - ~~(p)~~(n) Requirement 8.6.7.4 Private Residence Inclined Elevators is deleted in its entirety;
 - ~~(q)~~(o) Requirement 8.6.7.8 Shipboard Elevators is deleted in its entirety;
 - ~~(r)~~(p) Requirement 8.6.7.9 Mine Elevators is deleted in its entirety; and

(s)(q) Nonmandatory Appendix H Private Residence Elevator Guarding (5.3.1.6.2) is deleted in its entirety.

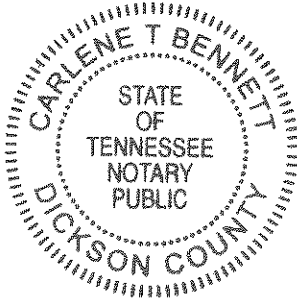
- (14) The Safety Code for Existing Elevators and Escalators. ASME A17.3 - 1996, Fourth Edition, approved by the American National Standards Institute on October 3, 1996, effective as of August 21, 1997, prepared and published by The American Society of Mechanical Engineers shall be considered a part of this Chapter.
- (15) TUV Standard. A standard published by the Technischer Überwachungs Verein or Technical Inspection Organization.

Authority: T.C.A. §§68-121-101, 68-121-102, 68-121-103, 68-121-103(d), 68-121-104(c) and 68-121-108. **Administrative History:** Original rule certified June 10, 1974. Amendment filed September 19, 1974; effective October 19, 1974. Amendment filed March 29, 1978; effective April 28, 1978. Amendment filed March 12, 1979; effective April 26, 1979. Amendment filed February 5, 1991; effective May 29, 1991. Amendment filed July 24, 2000; effective November 28, 2000. Amendment filed December 13, 2001; effective April 30, 2002. Amendment filed July 17, 2006; effective November 28, 2006. Amendment filed February 24, 2010; effective July 29, 2010.

* If a roll-call vote was necessary, the vote by the Agency on these rules was as follows:

Board Member	Aye	No	Abstain	Absent	Signature (if required)
Chairman Robbie Fox	X				
Mr. Roy Perry Burch	X				
Ms. Kelly O'Conner				X	
Mr. Charles J. Edens				X	
Mr. David Hale				X	
Mr. Larry R. Moore	X				
Mr. Lewis Moorner Jr.	X				
Mr. Mitch H. Rader	X				

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the Elevator/Amusement Device Board on 12/03/2015, and is in compliance with the provisions of T.C.A. § 4-5-222. The Secretary of State is hereby instructed that, in the absence of a petition for proposed rules being filed under the conditions set out herein and in the locations described, he is to treat the proposed rules as being placed on file in his office as rules at the expiration of ninety (90) days of the filing of the proposed rule with the Secretary of State.



Date: March 21, 2016

Signature: R. Mark Fink

Name of Officer: R. Mark Fink

Title of Officer: Asst. Administrator, WRC Division

Subscribed and sworn to before me on: March 21, 2016

Notary Public Signature: Carlene T. Bennett

My commission expires on: June 19, 2017

All proposed rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.

Herbert H. Slatery III
Herbert H. Slatery III
Attorney General and Reporter

4/6/2016
Date

RECEIVED
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PUBLICATIONS

Department of State Use Only

Filed with the Department of State on: 4/22/16

Effective on: 7/21/16

Joe Hargett
Joe Hargett
Secretary of State

G.O.C. STAFF RULE ABSTRACT

AGENCY: Department of Agriculture, Division of Consumer and Industry Services

SUBJECT: Pesticides, Pest Control Operators and Worker Protection; Fees

STATUTORY AUTHORITY: Tennessee Code Annotated, Title 43, Chapter 1, Part 7 and Sections 43-8-113, 43-8-302, and 62-21-111.

EFFECTIVE DATES: June 30, 2016 through June 30, 2017

FISCAL IMPACT: According to the Department, the rules are expected to generate approximately \$974,889 of additional revenue to the Agricultural Regulatory Fund. The additional revenue will cover approximately 99% of the cost of providing pesticides inspection and examination services by the department, up from 69% cost recovery provided by the current fee structure.

STAFF RULE ABSTRACT: According to the Department, the rulemaking hearing rule adjusts fee schedules for licenses and inspection services conducted by the Department's pesticides program, pursuant to amendment of the Agricultural Regulatory Fund law. The rule also clarifies requirements of licensees in the wood destroying organisms category.

Rule 0080-06-14 concerning pest control operators is replaced by Rule 0080-09-04.

Rule 0080-06-15 concerning commercial aerial application of pesticides is replaced by Rule 0080-09-03.

Rule 0080-06-16 concerning use of restricted use pesticides is replaced by Rule 0080-09-02.

Rule 0080-06-27 concerning worker protection is replaced by Rule 0080-09-05.

Rule 0080-09-01 creates a new chapter that will be reserved for classification of pesticides.

Rule 0080-09-02 creates a new chapter to replace Rule 0080-06-16 concerning restricted use pesticides. The new rules define the certification category of limited herbicide applicator, remove the schedule of civil penalty amounts that correspond to specific violations, and set the fee for each pesticide product registration at \$200 annually based on the tier system required by Tennessee Code Annotated Section 43-1-703

Rule 0080-09-03 creates a new chapter to replace Rule 0080-06-15 concerning commercial aerial application of pesticides. The new rules remove the log book requirement for aerial applicators from the rules, clarifying that the log book requirements in Tennessee Code Annotated Section 43-8-314 are to be followed. The new rules also set the fee for aerial decals at \$150 based on the tier system required by Tennessee Code Annotated Section 43-1-703.

Rule 0080-09-04 creates a new chapter to replace Rule 0080-06-14 concerning pest control operators. The new rules define microbial pest control (MPC) and mold remediation (MRC) as categories of licensure, clarify requirements of licensees in the wood destroying organisms category, and set certain fees based on the tier system required by Tennessee Code Annotated Section 43-1-703. The fees required in this rule chapter include special local need (\$250), commercial pest control operator charter (\$400 biennially), registration of nonclerical employees and issuance of solicitor and technician cards (\$50), consultant or custom applicator license exam (\$150), and pest control consultant license (\$500 biennially).

Rule 0080-09-05 creates a new chapter to replace Rule 0080-06-27 concerning worker protection. The new rule appears to be substantively the same as the current rule.

Public Hearing Comments

The Department of Agriculture held a public hearing on March 21, 2016. David Waddell served as hearing officer for the Rulemaking Hearing concerning 0080-01-03 Civil Penalties; 0080-06-14 Pest Control Operators; 0080-06-15 Rules and Regulations Governing Commercial Aerial Applications of Pesticides; 0080-06-16 Regulations Governing Use of Restricted Use Pesticides; 0080-06-27 Worker Protection; 0080-09-01 Classification of Pesticides; 0080-09-02 Restricted Use Pesticides; 0080-09-03; Commercial Aerial Application of Pesticides; 0080-09-04 Pest Control Operator Regulations; and 0080-09-05 Worker Protection.

Oral comments from the hearing and written comments from constituents are summarized below along with the Department's response:

Comment:

Kenny Crenshaw of Herbi-Systems in Millington, Tennessee made comment both on behalf of the state Pest Control Board and on behalf of himself as a pesticide applicator. On behalf of the Board, Mr. Crenshaw maintained that while notice of these rules was made with the Tennessee Secretary of State's Office, the rules had not been received or discussed by the Board or with industry generally. He requested that the Department attempt other means in the future to put industry and the Board on notice regarding rule changes. More generally, Mr. Crenshaw objected to the proposed change to increase the minimum age for certified applicators from 16 to 18 because the change would unduly burden farms and farmers where 16 year olds are already eligible for certification as applicators. Mr. Crenshaw also objected to both the proposed increase in certification examination fees, from \$15 to \$50, and the rule's re-certification examination fees of \$250. Mr. Crenshaw indicated that the re-certification examination fee operates as a penalty the Department is not specifically authorized by the Agricultural Regulatory Fund law to levy and that the fee is unwarranted where the Department provides no greater service or privilege for re-certification than is provided by taking the original certification exam. Mr. Crenshaw maintains that open adoption of federal rules for record keeping requirements of private applicators is too sweeping a requirement and that the language of the rule should be amended to limit adoption of federal rules to a date certain in case future federal rules on this subject are at odds with Tennessee governance. Finally, Mr. Crenshaw requested an indication from the Department regarding future changes to these rules and future pesticide rules of the Department.

Response:

The Department appreciates Mr. Crenshaw's comments; generally finds them well-taken, and has amended the rules accordingly.

With regard to notice, the Department submits that these rules were noticed in accordance with all applicable requirements of the Uniform Administrative Procedures Act and state law. Further, the Department offers that these rules underwent review with the Tennessee Pest Control Association and various members of industry prior to being noticed, and the Department received general consensus from those members for advancement of the rules. Nonetheless, the Department also acknowledges its continual aim to invite and to maintain open dialogue with all of its constituents affected by the Department's work. Consequently, the Department will take stock of its notice procedures in a manner aimed at their continual improvement.

With regard to certification and recertification exam fees, the Department is specifically authorized under T.C.A. §62-21-118 to establish certification and re-certification requirements, which need not be identical in application. On this topic, pesticides program fees have not been increased since 1994. Since that time, the Department has been called upon for consecutive and significant budget cuts; yet, the current cost recovery of pesticide program costs from fees is only 69%. The Department believes that further cuts to the pesticides section programs may unduly increase risks associated with sales and applications of pesticides in our state. Consequently, and unfortunately, program cuts are not a viable option to balance these programs' costs with revenues at this time. While no fee increase is ever desired, the Department believes that a middle-ground increase may be had both to better facilitate the proper administration of pesticide laws in this state, pursuant to T.C.A. §43-1-703, and not create an undue burden on pesticide applicators and licensees. For this reason, the Department has amended the rule to set certification and recertification exam fees at Tier 1 (\$25) each.

The Department expects to proceed with Attorney General review of these rules as necessary for their promulgation. The Department always strives for improvement of its rules and practices to increase

governmental efficiency and to improve clarity of regulatory requirements, while not unduly burdening the Tennessee public. These and all rules of the Department will be subject to the Department's perpetual review.

Comment:

Jeff Fedorchak of TruGreen in Memphis, Tennessee requested consideration of the certification exam fee increase being lowered from \$50 to \$25 and offered his support for a rule that set the fee at \$25. Mr. Fedorchak also offered appreciation for both the Department's efforts at an open dialogue with affected industry and accounting of program requirements where increased fees are needed.

Response:

The Department appreciates Mr. Fedorchak's comments; finds them well-taken and has amended the rule accordingly. The Department appreciates Mr. Fedorchak's support for its programs.

Comment:

Ronnie Griffis of Memphis, Tennessee echoed many of the comments made by Mr. Crenshaw. Mr. Griffis further requested consideration of a medical and military leave exemption for accumulation of continuing education units necessary for recertification as a certified applicator.

Response:

The Department appreciates Mr. Griffis' comments, and would offer its same response as noted above for Mr. Crenshaw's comments. With respect to Mr. Griffis' request for medical and military leave exemption from continuing education requirements for certified applicators, the Department notes that the exemption already exists under 0080-09-04-.05(1) for active practice and certification. In an abundance of caution, the Department has amended this rule to insert similar language in 0080-09-02-.06(4) for recertification requirements of commercial applicators.

Comment:

Scott Burnett of Alpha Pest Management Association offered his support for a \$250 re-certification examination fee as previously noticed in this rule. In support, Mr. Burnett noted he and other members of industry participated with the Department in development of the rules and that various members of industry similarly supported requirements that applicators obtain required continuing education units. He maintained that continuing education offers vital updates to industry practices that are not otherwise made known to persons who retest in lieu of obtaining continuing education, e.g. label changes. Consequently, he and other members of industry, including the Tennessee Pest Control Association, supported a higher \$250 re-examination fee for applicators that retest in lieu of obtaining continuing education.

Response:

The Department appreciates Mr. Burnett's comments and agrees that continuing education units serve an important role in knowledgeable practice of applying pesticides. To that end, continuing education units are required by this rule, and those applicators who do not obtain them are required to retest and may be subject to assessment of civil penalties or other regulatory enforcement measures.

Regulatory Flexibility Addendum

Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rule making process as described in T.C.A. § 4-5-202(a)(3) and T.C.A. § 4-5-202(a), all agencies shall conduct a review of whether a proposed rule or rule affects small businesses.

- (1) Type or types of small business subject to the proposed rule that would bear the cost of and/or directly benefit from the proposed rule:

Businesses subject to the proposed rule include those businesses engaged in sale of pesticides or performance or advertising of pest control services in the state.

- (2) Identification and estimate of the number of small businesses subject to the proposed rule:

Approximately 1,462 firms, 10,634 certified commercial applicators, and 8,172 private applicators are licensed, certified, or registered with the department for pest control services.

- (3) Projected reporting, recordkeeping and other administrative costs required for compliance with the proposed rule, including the type of professional skills necessary for preparation of the report or record:

Reporting, recordkeeping, and other administrative costs of small businesses are unaffected by this rule inasmuch as the rule does not alter or duplicate those reporting or recordkeeping requirements otherwise applicable under existing regulation.

- (4) Statement of the probable effect on impacted small businesses and consumers:

The effect of these rules on small businesses is to adjust fees in an effort to better grade the department's fee schedule among small and large business licensees according to departmental expenditures in regulating the pesticides program.

- (5) Description of any less burdensome, less intrusive or less costly alternative methods of achieving the purpose and/or objectives of the proposed rule that may exist, and to what extent such alternative means might be less burdensome to small business:

No less burdensome methods for achieving this purpose are possible.

These rules are promulgated to implement Public Chapter 485 of 2015, which expanded the Agricultural Regulatory Fund to include all fee-generated revenue collected by the department. As part of the legislation, all fee amounts charged by the department were removed from the Code, and the commissioner of agriculture was authorized to set the fee amounts by regulation. The intent of the legislation is to allow the department to adjust fees and to improve the percentage of cost recovery for its programs through fee collection rather than relying as heavily on revenue from the general fund.

- (6) Comparison of the proposed rule with any federal or state counterparts:

Most states maintain similar requirements for licensing or registering persons in the manufacture, distribution, or application of pesticide products.

- (7) Analysis of the effect of the possible exemption of small businesses from all or any part of the requirements contained in the proposed rule.

Exemption of small businesses from this rule may expose the state to greater risks associated with sale and application of pesticides and will compromise the intent to grade fee schedules according to resources expended for oversight of regulatory programs.

Impact on Local Governments

Pursuant to T.C.A. §§ 4-5-220 and 4-5-228 "any rule proposed to be promulgated shall state in a simple declarative sentence, without additional comments on the merits of the policy of the rules or regulation, whether the rule or regulation may have a projected impact on local governments." (See Public Chapter Number 1070 (<http://state.tn.us/sos/acts/106/pub/pc1070.pdf>) of the 2010 Session of the General Assembly)

No impact is expected on local governments.

Additional Information Required by Joint Government Operations Committee

All agencies, upon filing a rule, must also submit the following pursuant to T.C.A. § 4-5-226(i)(1).

- (A) A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

This rule adjusts fee schedules for licenses and inspection services conducted by the department of agriculture's pesticides program, pursuant to amendment of the Agricultural Regulatory Fund law. The rule also clarifies requirements of licensees in the wood destroying organisms category.

- (B) A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

Tenn. Code Ann. §43-1-701, et seq. requires the commissioner of agriculture to establish by rule fees for the proper administration of the Tennessee Insecticide, Fungicide, and Rodenticide Act; title 43, chapter 8, part 3, relative to the aerial application of pesticides; and the Tennessee Application of Pesticides Act, and the costs of the Department. See also Tenn. Code Ann. §§ 43-8-113; 43-8-302; and 62-21-111.

- (C) Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

Businesses most affected by this rule include those that are engaged in the sale of pesticides or performance/advertising of pest control services in the state. TruGreen, Corporate Affairs, supports adoption of this rule. Herbi-Systems objects to fee increases for certification and re-certification examinations of pesticide applicators. Alpha Pest Management Association and the Tennessee Pest Control Association both supported an increase in re-certification examination fees, to \$250, which has been amended in this rule to \$25.

- (D) Identification of any opinions of the attorney general and reporter or any judicial ruling that directly relates to the rule;

Estrin v. Moss, 430 S.W.2d 345 (Tenn. 1968).

- (E) An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency's annual budget or five hundred thousand dollars (\$500,000), whichever is less;

These rules are expected to generate approximately \$974,889 of additional revenue to the Agricultural Regulatory Fund. The additional revenue will cover approximately 99% of the cost of providing pesticides inspection and examination services by the department, up from 69% cost recovery provided by the current fee structure.

- (F) Identification of the appropriate agency representative or representatives, possessing substantial knowledge and understanding of the rule;

David Waddell, Administrative Director, and Kathy Booker, Pesticides Administrator, Tennessee Department of Agriculture, Consumer and Industry Services Division

- (G) Identification of the appropriate agency representative or representatives who will explain the rule at a scheduled meeting of the committees;

David Waddell, Administrative Director, Tennessee Department of Agriculture, Consumer and Industry Services Division

- (H) Office address, telephone number, and email address of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

436 Hogan Road, Nashville, Tennessee 37220; (615) 837-5331; david.waddell@tn.gov

- (I) Any additional information relevant to the rule proposed for continuation that the committee requests.

**Department of State
Division of Publications**

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Nashville, TN 37243
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Sequence Number: 04-01-16
Rule ID(s): 6166-6174
File Date: 4/1/16
Effective Date: 6/30/16

Rulemaking Hearing Rule(s) Filing Form

Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing (Tenn. Code Ann. § 4-5-205).

Pursuant to Tenn. Code Ann. § 4-5-229, any new fee or fee increase promulgated by state agency rule shall take effect on July 1, following the expiration of the ninety (90) day period as provided in § 4-5-207. This section shall not apply to rules that implement new fees or fee increases that are promulgated as emergency rules pursuant to § 4-5-208(a) and to subsequent rules that make permanent such emergency rules, as amended during the rulemaking process. In addition, this section shall not apply to state agencies that did not, during the preceding two (2) fiscal years, collect fees in an amount sufficient to pay the cost of operating the board, commission or entity in accordance with § 4-29-121(b).

Agency/Board/Commission:	Department of Agriculture
Division:	Consumer & Industry Services
Contact Person:	Jay Miller
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Zip:	37204
Phone:	(615) 837-5341
Email:	jay.miller@tn.gov

Revision Type (check all that apply):

- ☐ Amendment
☒ New
☒ Repeal

Rule(s) Revised (ALL chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please enter only ONE Rule Number/Rule Title per row)

Chapter Number	Chapter Title
0080-06-14	Repealed
Rule Number	Rule Title

Chapter Number	Chapter Title
0080-06-15	Repealed
Rule Number	Rule Title

Chapter Number	Chapter Title
0080-06-16	Repealed
Rule Number	Rule Title

Chapter Number	Chapter Title
0080-06-27	Repealed
Rule Number	Rule Title

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0080-09-01-.01	Reserved

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Chapter 0080-06-14
Pest Control Operators

Chapter 0080-06-14 Pest Control Operators is repealed in its entirety.

Authority: T.C.A. §§ 4-3-203; 62-21-118.

**RULES
OF
THE TENNESSEE DEPARTMENT OF AGRICULTURE
DIVISION OF PLANT INDUSTRIES**

**CHAPTER 0080-06-14
PEST CONTROL OPERATORS**

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~~0080-06-14-.01 QUALIFICATIONS OF APPLICANTS.~~

- ~~(1) Applicants are required to have a Commercial Pesticide Applicator Certificate in the particular license category before taking a license examination as provided in Rule 0080-06-16-.03.~~
- ~~(2) Applicants must be at least 18 years of age and a U.S. citizen or possess a current U.S. government issued visa prior to taking the license examination.~~
- ~~(3) Education — Except for the license examination for Wood Destroying Organisms, applicants are qualified to take any license examination(s) based on their education, as follows:~~
 - ~~(a) Applicants are qualified to take a license examination based on their education if they have a Bachelor's degree with a major or minor, as evidenced by an official transcript, in at least one or more of the following curricula: Agriculture, Biology, Chemistry, Forestry, Horticulture, Entomology, Plant Pathology and Plant Science or other similar degree.~~
 - ~~(b) Applicants are qualified to take the Pest Control Consultant license examination if they are a graduate of an accredited college or university with a Bachelor's degree in the field of pest control in which the consultation is being offered. A license in this category does not qualify the holder to conduct pest control operations.~~
- ~~(4) Education and Experience: Applicants are qualified to take any license examination(s) based on a combination of their education and experience as follows:~~
 - ~~(a) Applicants with a degree as set forth in 3(a) above and one (1) year of full time work experience in Wood Destroying Organisms are qualified to take the license examination in that category.~~
 - ~~(b) Applicants with a Masters or PhD degree in entomology that have graduated from the Tennessee Apprentice Termite Technician School are qualified to take the license examination in the category of Wood Destroying Organisms.~~

(Rule 0080-06-14 .01, continued)

- (c) ~~Applicants who hold a current Horticulture, Lawn and Turf (HLT); Horticulture-Interior (HRI); Weed Control Right of Way and Industrial (WEC); or Agricultural Ground Equipment (AGE) license are qualified to take the license examination in another of these four categories, provided they are certified in the license category applied for, have two or more years work experience in the license category applied for, or have at least twelve (12) college level semester hours or twenty four (24) Continuing Education Units (CEU) related to the license category applied for.~~
- (d) ~~Applicants are qualified to take the Agricultural Ground Equipment or Horticulture-Lawn and Turf license examination if they have twenty four (24) months' work experience, a BA degree, a minimum of twelve (12) college level semester hours or twenty four (24) continuing education units (CEU) related to the categories of Agricultural Ground Equipment or Horticulture-Lawn and Turf.~~
- (5) ~~Experience—Applicants who wish to take a license examination based only on experience must have been registered with the department as a pest control technician or salesperson, as provided in Tenn. Code Ann. § 62-21-109, for twenty four (24) months of full-time work experience, or provide documentary evidence of such employment if the registration failed to occur at no fault of the applicant, or if the experience was obtained out of state.~~

Applicants are qualified to take the license examinations below as follows:

- (a) ~~Applicants with a valid Certified Crop Advisors (CCA) Certificate are qualified to take the Horticulture-Lawn and Turf (HLT) or Agricultural Ground Equipment (AGE) examinations, provided they have satisfied the requirements above, have one (1) year of full-time work experience applying pesticide in the category of license applied for and are certified in the category of same.~~
- (b) ~~Applicants with a current General Pest and Rodent Control license and a Public Health Mesquite Control certificate are qualified to take the license examination in the latter category.~~
- (6) ~~Applicants who misrepresent their work experience shall be ineligible to take the examination for two (2) years after the applicant meets the required qualifications.~~
- (7) ~~If the Department determines that the application contained inaccurate information after a person passes the examination and is issued a license, the license shall be revoked in accordance with the Uniform Administrative Procedures Act, and the person shall not be allowed to resubmit an application for the license examination for two (2) years.~~

Authority: ~~T.C.A. §§ 62-21-105 and 62-21-118. **Administrative History:** Original rule certified June 5, 1974. Amendment filed June 25, 1975; effective July 25, 1975. Amendment filed November 16, 1978; effective January 1, 1979. Repealed and rule filed September 22, 1982; effective October 22, 1982. Amendment filed August 8, 1984; effective September 7, 1984. Amendment filed November 13, 1986; effective December 28, 1986. Amendment filed October 30, 1987; effective December 14, 1987. Amendment filed January 5, 1989; effective February 19, 1989. Amendment filed October 11, 1991; effective November 26, 1991. Amendment filed June 28, 2007; effective September 11, 2007. Amendment filed May 29, 2008; effective September 26, 2008.~~

0080-06-14 .02 CERTIFICATION OF QUALIFICATIONS. ~~Upon application to take a license examination, or at such other time as the Pest Control Board (hereinafter referred to as Board) may require, the applicant shall present:~~

(Rule 0080-06-14 .02, continued)

- (1) A certified statement or letter from persons or firms in whose employment the applicant received any qualifying experience; and/or
- (2) A copy of a transcript or certificate properly evidencing a qualifying degree, professional standing, course hours or continuing education units (CEU).

Authority: T.C.A. §§62-21-105 and 62-21-118. **Administrative History:** Original rule certified June 5, 1974. Amendment filed June 25, 1975; effective July 25, 1975. Repeal filed September 22, 1982; effective October 22, 1982. New rule filed October 26, 1988; effective December 10, 1988. Amendment filed June 28, 2007; effective September 11, 2007. Amendment filed May 29, 2008; effective September 26, 2008.

0080-06-14 .03 EXAMINATION OF LICENSE APPLICANTS.

- (1) Applications to take a license examination shall be submitted by the tenth day of the month preceding the month of the scheduled examination.
- (2) License examinations will be given the first month of each quarter at Ellington Agricultural Center in Nashville, Tennessee or when and where the Board decides.
- (3) Qualified applicants who have submitted an application will be notified of the date, place and time of the examination(s). Applicants who are not qualified will be notified in writing that the application was not approved with the reason(s) stated.
- (4) License examinations shall be given in two (2) parts as follows:
 - (a) The first part of the examination will test applicants in the following areas of competency as they apply to the specific categories of licensure:
 - 1. State and Federal Laws & Regulations
 - 2. Insects
 - 3. Weeds & Disease
 - 4. Plant Management Decision-Making
 - 5. Herbicide Technology
 - 6. Pesticide Safety
 - 7. Adjuvants
 - 8. Fumigation and Soil Fumigation
 - 9. Integrated Pest Management
 - 10. Environmental Considerations
 - 11. Principles of Vegetation Management
 - 12. Plant Growth Regulators
 - 13. Calibration of Application Equipment
 - 14. Common Problems Encountered During Application
 - 15. Professionalism and Public Relations in Vegetation Management
 - 16. Pest, Bird, Plant, Tree and Disease Identifications
 - 17. Pesticides and Human Health
 - 18. Drift Management
 - 19. Navigation (Aerial using GPS, DGPS, OmniSTAR)
 - 20. Calculating Area of Target Site
 - 21. Pesticide Measurement Systems
 - 22. Operations (Aerial pilot & ground crews, aircraft crash response)
 - 23. Mosquitoes & Human Diseases
 - 24. Life Cycle of Mosquitoes
 - 25. Wood Destroying Organisms
 - 26. Vertebrates and Invertebrates
 - 27. Pests on or Near Food

~~(Rule 0080-06-14-.03, continued)~~~~28. Urban IPM Programs~~~~29. Implementing Urban Pest Management Programs~~

- ~~(b) The second part of the examination will test applicants on specimen identification as it relates to the particular license category.~~
- ~~(5) To pass the license examination, applicants must score seventy (70) percent or higher on both parts.~~
- ~~(6) Applicants will be allowed two (2) hours to complete the first part of the examination and three (3) hours to complete the second part.~~
- ~~(7) While there is no limitation on the number of categories for which a license applicant may be examined during any examination period, the above stated time limits shall apply.~~
- ~~(8) Applicants approved to take the license examination(s) are required to present a photo ID on the day of testing.~~
- ~~(9) Applicants must pass the first part of the examination before they can take the second part. Applicants that fail the second part shall only be required to retake that part of the examination.~~
- ~~(10) Applicants exhibiting unethical behavior during an examination shall be ineligible to take another license examination for two (2) years.~~
- ~~(11) Applicants who cannot take a scheduled examination due to circumstances beyond their control must contact the Department within forty-eight (48) hours of the scheduled examination to reschedule or their examination fee will be forfeited.~~

Authority: ~~T.C.A. §§62-21-105, 62-21-112 and 62-21-118. Administrative History: Original rule certified June 5, 1974. Amendment filed June 25, 1975; effective July 25, 1975. Amendment filed February 14, 1977; effective March 16, 1977. Amendment filed November 16, 1978; effective January 1, 1979. Repeal and new rule filed September 22, 1982; effective October 22, 1982. Amendment filed January 5, 1989; effective February 19, 1989. Amendment filed June 28, 2007; effective September 11, 2007.~~

0080-06-14-.04 LICENSE CATEGORIES. ~~The substance of the license examinations will be taken from study material developed by the University of Tennessee. Such material can be purchased by contacting the University of Tennessee at (865) 974-7138 or at the University's website at <http://eppserver.ag.utk.edu/pscp/pscp.htm>. The license categories are as follows:~~

- ~~(1) Agricultural Ground Equipment (AGE) is the control of agricultural pests by means other than fumigation. Applicants for this license must be certified in Agricultural Plant Pest Control.~~
- ~~(2) Aquatic Pest Control (APC) is the control of aquatic plants and algae through the application of pesticides. Applicants for this license must be certified in Aquatic Pest Control.~~
- ~~(3) Bird Control (BDC) is the control of bird pests through the use of pesticides. Applicants for this license must be certified in Industrial, Institutional, Structural and Health Related Pest Control.~~
- ~~(4) Forest Pest Control (FPC) is the control of tree pests and diseases in institutional and non-agricultural locations. Applicants for this license must be certified in Forest Pest Control.~~

~~(Rule 0080-06-14-04, continued)~~

- ~~(5) Fumigation—Soil (FUS)—is the control of agricultural pests found in the soil application of a gas. This category includes pesticides that are in a solid or liquid state when handled or applied but which turn to gas upon being dispensed. Applicants for this license must be certified in Agricultural Plant Pest Control.~~
- ~~(6) Fumigation—Structural (FUM)—is the control of pests by application of a gas. This category includes pesticides that are in a solid or liquid state when handled or applied but which turn to gas upon being dispensed. Applicants for this license must be certified in Industrial, Institutional, Structural and Health-Related Pest Control.~~
- ~~(7) General Pest and Rodent Control (GRC)—is the control of vertebrate and invertebrate pests that invade or are normally known to invade a structure, and which are not specifically covered by other categories of licenses described herein. Applicants for this license must be certified in Industrial, Institutional, Structural and Health-Related Pest Control.~~
- ~~(8) Horticultural—Interior (HRI)—is the control of plant pests and diseases. The category applies to residential and commercial locations, but does not include greenhouses. Applicants for this license must be certified in Ornamental and Turf Pest Control.~~
- ~~(9) Horticulture—Lawn and Turf (HLT)—Control of pests and diseases that normally invade turf, lawns, and landscape in non-agricultural locations such as residential and commercial lawns and landscapes, parks and athletic fields. This category includes fire ants, fleas and ticks, but no other pests that normally invade the inside of a structure and which are not specifically covered by other categories of licenses described herein. Applicants for this license must be certified in Ornamental and Turf Pest Control.~~
- ~~(10) Pest Control Consultant (PCC)—is a graduate of an accredited college or university with a Bachelor's degree in the field of pest control in which consultation is offered. A license in this category does not qualify the holder to conduct pest control operations.~~
- ~~(11) Public Health Mosquito Control (PHMC)—is the management of mosquitoes, in all stages of their development, on public land and public waters. Applicants for this license must be certified in Public Health Pest Control.~~
- ~~(12) Weed Control—Right of Way and Industrial (WEC)—is the control of plants, whether woody or herbaceous, by the application of chemicals generally classified as herbicides, to industrial sites and rights-of-way such as, but not limited to, highways, transmission lines, drainage ditches, etc. Applicants for this license must be certified in Right of Way Pest Control.~~
- ~~(13) Wood Destroying Organisms (WDO)—is the control of termites, various wood borers, carpenter bees, carpenter ants and decay, without regard to the type or use of structure involved. Applicants for this license must be certified in Industrial, Institutional, Structural and Health-Related Pest Control.~~
- ~~(14) Wood Preservatives (WPC)—is the control of insects, fungi, marine borers and the effects of weather on wood products at the manufacturing or distribution stage that may damage or degrade the wood. Applicants for this license must be certified in Wood Preservation Pest Control.~~
- ~~(15) Special (SPC)—is the control of pests in special situations by methods not included in the other license categories listed above. These licenses may or may not require an examination in the discretion of the Board and are limited to specific pesticide uses and situations as determined by the Board.~~

~~(Rule 0080-06-14-.04, continued)~~

~~**Authority:** T.C.A. §§62-21-105 and 62-21-118. **Administrative History:** Original rule certified June 5, 1974. Repeal and new rule filed September 22, 1982; effective October 22, 1982. Amendment filed January 5, 1989; effective February 19, 1989. Amendment filed October 11, 1991; effective November 26, 1991. Amendment filed August 22, 1995; effective December 30, 1995. Amendment filed October 28, 2002; effective February 28, 2003. Amendment filed June 28, 2007; effective September 11, 2007. Amendment filed May 29, 2008; effective September 26, 2008.~~

0080-06-14-.05 REPEALED.

~~**Authority:** T.C.A. §§62-21-118 and 62-21-119. **Administrative History:** Original rule certified June 5, 1974. Amendment filed November 16, 1978; effective January 1, 1979. Repeal and new rule filed September 22, 1982; effective October 22, 1982. Repeal filed January 5, 1989; effective February 19, 1989.~~

0080-06-14-.06 LICENSES - REQUIREMENT OF ACTIVE PRACTICE AND CERTIFICATION.

- ~~(1) Applicants who have passed the license examination(s) must pay all fees within one year of the examination date to obtain the license(s) or be required to re-take the examination(s). Individuals with extenuating circumstances, such as a medical condition or military service, are required to provide documented proof of such circumstances and will be evaluated on a per-case basis.~~
- ~~(2) License holders with expired licenses and certifications must re-take the license and certification examinations before they can renew their license. Individuals with extenuating circumstances, such as a medical condition or military service, must provide documented proof and will be evaluated on a per-case basis.~~
- ~~(3) Licenses will be suspended upon the expiration of the license holder's certification and reinstated when certification is obtained again, provided that the certification has not been expired for more than one year. Individuals with extenuating circumstances, such as a medical condition or military service, must provide documented proof and will be evaluated on a per-case basis.~~

~~**Authority:** T.C.A. §§ 4-3-203, 62-21-105, 62-21-118 and 62-21-123. **Administrative History:** Original rule certified June 5, 1974. Amendment filed June 25, 1975; effective July 25, 1975. Amendment filed November 16, 1978; effective January 1, 1979. Repeal and new rule filed September 22, 1982; effective October 22, 1982. Amendment filed June 28, 2007; effective September 11, 2007.~~

0080-06-14-.07 REQUIREMENTS FOR LICENSEES IN FUMIGATION. When a gas poisonous to human beings is used in fumigation, a certified applicator licensed in the category of fumigation, as provided in Rule 0080-06-14-.04 (5) and (6), shall be present, actively in charge of work and shall ensure that the following requirements are adhered to:

- ~~(1) A gas mask that protects against the gas being used shall be kept at the location where the fumigation is being done.~~
- ~~(2) Signs shall be prominently displayed at all entrances to the building, structure, or other fumigation site, declaring that the property is being fumigated and that no one should enter.~~
- ~~(3) A guard shall be maintained at any building or structure that is entered by the public. All doors shall be locked, posted and patrolled by the guard, who shall have access to a gas mask at all times.~~
- ~~(4) The certified and licensed applicator shall be responsible for clearing the structure of fumigants by following all label directions prior to re-entry.~~

(Rule 0080-06-14-07, continued)

Authority: ~~T.C.A. §§ 4-3-203, 62-21-105 and 62-21-118. Administrative History: Original rule certified June 5, 1974. Amendment filed November 16, 1978; effective January 1, 1979. Repeal and new rule filed September 22, 1982; effective October 22, 1982. Amendment filed January 5, 1989; effective February 19, 1989. Amendment filed June 28, 2007; effective September 11, 2007.~~

0080-06-14-08 REQUIREMENTS FOR LICENSEES IN WOOD DESTROYING ORGANISMS.

- (1) ~~Persons operating under licenses for wood destroying organisms shall conform to the following regulations or shall use other department approved methods.~~
 - (a) ~~A written contract (warranty optional) with all blanks completed shall be executed in duplicate on every control job for wood destroying organisms, other than termites. A written contract with a warranty shall be issued on every job for control of termites. In each case one copy is to be left with the property owner or his agent, and a copy retained by the operator. These contracts shall be numbered to assure that both parties hold identical documents. All such contracts and warranties, shall be transferable so as to remain with the treated property for the remainder of the current year's contract term.~~
 - (b) ~~When a contract with a warranty is issued on any structure for control of termites that does not meet state specifications, those areas or portions thereof not meeting state specifications must be treated and brought up to state specifications.~~
 - (c) ~~A graph shall be drawn and attached to each contract as described in (1)(a) and said graph shall show the condition of the property as it relates to termite infestation and damage at the time of the initial contract.~~
- (2) ~~Unless authorized by paragraph (6) of this rule or unless prohibited by the label, the operator shall give the following minimum services on each job for control of termites:~~
 - (a) ~~All applications of pesticides for the purpose of controlling wood destroying organisms shall be done in accordance with label directions. 40 C.F.R. (2)(ee) shall not apply when mixing or applying termiticides.~~
 - (b) ~~All pretreatments shall be completed according to label directions within one (1) year of the date the initial treatment or to coincide with the completion of the backfill.~~
- (3) ~~Each property under contract by a termite control operator shall be examined by the operator at least once per year if the owner or agent makes the property available. A report of the re-examination and all subsequent inspections showing the condition of the property with respect to the absence or presence of termites and/or other wood destroying organisms shall be filed with the property owner and a copy kept in the operator's file, subject to inspection by the Department.~~
- (4) ~~At such time as he may deem desirable, the Commissioner or his authorized representative, shall examine records and properties treated for the purpose of determining the efficiency of the treatment given. Whenever unsatisfactory or substandard treatments are found, the operator and/or charter holder will be notified and will be given a reasonable length of time in which to correct such conditions. If the operator shall neglect or refuse to make such corrections, his license and/or charter or both may be suspended as provided for by law, unless he can show to the satisfaction of the Department of Agriculture why such action should not be taken. While his license is suspended for this cause, the operator or charter holder shall have the privilege of retreating all properties on which he has current contracts, but shall not solicit any new business. He shall notify the Department of Agriculture of the~~

(Rule 0080-06-14 .08, continued)

~~dates of any such reexaminations and retreatments. When all properties previously reported to be in an unsatisfactory condition have been re-examined and retreated, the Department of Agriculture shall then make the reinspections at its earliest convenience. If the Department of Agriculture, upon reinspection shall find all of the properties in satisfactory condition, then the suspension may be removed. Otherwise, the license and/or charter or both may be permanently revoked. A license or charter may be suspended or revoked for gross neglect of contracts, falsifying the presence of an insect pest, or general failure to give satisfactory service.~~

- (5) ~~All contracts for termite control shall carry a one year warranty for retreatments of termites only. The issuance of a damage guarantee is optional.~~
- (6) ~~Less than complete treatments may be given when:~~
 - (a) ~~Physical reasons or conditions prevent a full treatment, such as, well beneath building, heat/air duct pipe embedded in slab, plenum air space, crawl space too low or;~~
 - (b) ~~When the label prohibits and;~~
 - (c) ~~The owner of the treated property is fully informed.~~
- (7) ~~No warranty or guarantee need be given for less than complete treatment of non commercial buildings. However, the contract covering such work shall have the stipulation that no guarantee is given. In addition, the words "No guarantee" shall be stamped or printed in letters one half inch high on both sides of the invoice and guarantee/agreement form referring to this treatment.~~
- (8) ~~Wood Destroying Beetles~~
 - (a) ~~When treatment will be permitted~~ ~~When it is determined that an active infestation exists, treatment will be permitted for the control or prevention of reinfestation of the families of beetles which are known to reinfest seasoned wood, i.e., Anobiidae, Lyctidae, Bostrichidae, Cerambycidae, (old house borer and flat oak borer only) and Curculionidae. Preventive treatment in the absence of an infestation is prohibited. Treatment for the control or prevention of other beetles, such as bark beetles, that do not cause structural damage to seasoned wood is prohibited.~~
 - (b) ~~Determining Active Infestations:~~
 - 1. ~~Anobiidae (Anobiid Powder Post) Beetles:~~
 - (i) ~~The presence of fresh frass will be acceptable as evidence of an active infestation of the Anobiidae.~~
 - (ii) ~~The presence of holes alone or holes and dull colored frass will not be acceptable evidence of an active infestation of the Anobiidae except in such cases when live larvae and pupae are found in wood members.~~
 - (iii) ~~Anobiidae Beetles usually infest products older than 10 years and most infestations are confined to softwoods, whereas the Lyctidae only actively infest recently processed hardwoods.~~
 - 2. ~~Powder Post Beetles (Lyctidae):~~

(Rule 0080-06-14-.08, continued)

- (i) If hardwoods are less than 10 years old, they are much more likely to be infested with Lyctidae Beetles, but fresh frass should still be present to warrant treatment.
 - (ii) If wood is over 10 years old, only fresh frass and/or live larvae or pupae in wood will be acceptable evidence of activity.
 - 3. Old House Borer (*Hylotrupes bajulus* L.):
 - (i) The presence of adult beetles and oval exit holes with fresh sawdust-like frass in softwoods will be evidence of an active infestation.
 - (ii) The presence of live larvae or pupae in softwoods will be evidence of an active old house borer infestation, if the frass is sawdust-like.
- (c) Treatment Procedures:
 - 1. When wood destroying beetles are present at or below the subfloor level, then control measures should be applied from underneath the structure using any approved pesticide labeled for that use.
 - 2. If there is evidence to indicate or reasonable cause to suspect that a substantial active infestation of wood destroying beetles exists above the subfloor level, then fumigation with an approved fumigant is permitted, provided the property owner has been informed of other alternative treatments such as removal and replacement of infested wood members or treatment of the substructure only if it is actively infested.
- (9) Carpenter Ants and Bees:
 - (a) Carpenter Ants (*Camponotus*, Sp.) damage can be recognized by the presence of hollow, irregular, clean chambers cut across the grain, and by the presence of fine to coarse wood fibers, which are removed from the chamber by the ant as the nest is constructed. Treatment of carpenter ants may be localized treatments by an approved pesticide. The nest should be found and treated if possible. Carpenter ants are generally present due to excess moisture somewhere in the wooden structures. To help in controlling the carpenter ant infestation, the moisture problem should also be corrected.
 - (b) Carpenter Bee (*Xylocopa* spp.) These bees often burrow into the exposed, dry wood of buildings, posts, wooden fences, etc. Since the bees often colonize the same piece of wood, the damage to timber can be quite extensive. Control can be had by applying any approved chemical into the entrance holes. Holes should not be filled until fall as the bees entering the holes will come in contact with the dust.
- (10) (a) All infestations of *Coptotermes Formosanus* Shiaki or any other members of the genus *Coptotermes*, known as the Formosan termite, shall be reported to the Tennessee Department of Agriculture, Plant Industries, or to any employee or agent thereof.
- (b) All known infestations of *Coptotermes* termites are to be treated. This treatment is to be carried out utilizing accepted industry methods, with appropriately labeled pesticides.

Authority: T.C.A. §§62-21-105 and 62-21-118. **Administrative History:** Original rule certified June 5, 1974. Amendment filed November 16, 1978; effective January 1, 1979. Repeal and now rule filed September 22, 1982; effective October 22, 1982. Amendment filed August 8, 1984; effective September

~~(Rule 0080-06-14 .08, continued)~~

~~7, 1984. Amendment filed March 15, 1985; effective June 14, 1985. Amendment filed January 5, 1989; effective February 19, 1989. Amendment filed October 11, 1991; effective November 26, 1991.~~

0080-06-14-09 REPEALED.

Authority: ~~T.C.A. §§62-21-105 and 62-21-118. **Administrative History:** Original rule certified June 5, 1974. Amendment filed June 25, 1975; effective July 25, 1975. Amendment filed February 14, 1977; effective March 16, 1977. Repeal and new rule filed September 22, 1982; effective October 22, 1982. Repeal filed October 11, 1991; effective November 26, 1991.~~

0080-06-14-10 NOTIFICATION TO BEEKEEPERS.

- (1) ~~Notification shall be given as far in advance as possible to all beekeepers in the area where agricultural ground application of pesticides is to be done. Notification to the Department of Agriculture as far in advance as possible of the time the pesticide application shall be sufficient notice to comply with this regulation. The materials having the least toxic qualities to honeybees shall be used whenever possible.~~

Authority: ~~T.C.A. §62-21-118. **Administrative History:** Original rule certified June 5, 1974. Repeal and new rule filed September 22, 1982; effective October 22, 1982.~~

0080-06-14-11 CERTIFICATION OF COMMERCIAL PESTICIDE APPLICATORS

- (1) ~~No charter holder or licensed applicator shall allow an uncertified person to apply pesticides except in accordance with this rule.~~
- (2) ~~Pesticides must be applied by a certified applicator or in the presence of an applicator certified in accordance with Rule 0080-06-16-03 in the category in which services are being provided.~~
- (3) ~~Commercial Pesticide Applicators who apply pesticides under the direct supervision of a licensed pest control operator must be certified in accordance with Rule 0080-06-16-03 in the category in which services are being provided.~~
- (4) ~~Commercial Pesticide Applicators will be issued an individual commercial certification card and are responsible for maintaining their certification as provided in Rule 0080-06-16-04.~~

Authority: ~~T.C.A. §§ 4-3-203, 62-21-105 and 62-21-118. **Administrative History:** Original rule certified June 5, 1974. Repeal filed September 22, 1982; effective October 22, 1982. New rule filed October 26, 1988; effective December 10, 1988. Amendment filed June 28, 2007; effective September 11, 2007.~~

0080-06-14-12 RECORDKEEPING REQUIREMENTS FOR COMMERCIAL PEST CONTROL OPERATORS AND COMMERCIAL APPLICATORS.

- (1) ~~All commercial applicators and pest control operators shall keep true and accurate records of both restricted and non-restricted pesticide use, retain such record for two (2) years, and make the original records and copies thereof available to the Commissioner of Agriculture or his designee.~~
- (2) ~~The records must show:~~
 - (a) ~~The applicator name(s) and TDA assigned ID number;~~
 - (b) ~~The pesticide used;~~
 - (c) ~~The target pest(s);~~

~~(Rule 0080-06-14-12, continued)~~

- ~~(d) The crop, plant, house, business, or building the pesticide is applied on or to and the location thereof; including the physical address or Farm Services Agency number;~~
- ~~(e) The application rate;~~
- ~~(f) The percentage of mixed-use dilution;~~
- ~~(g) The landowner, agent or other person employing such applicator;~~
- ~~(h) The date of service, and~~
- ~~(i) The amount of pesticide used.~~

~~**Authority:** T.C.A. §§ 62-21-105, 62-21-118. **Administrative History:** Original rule certified June 5, 1974. Repeal filed November 16, 1978; effective January 1, 1979. Amendment filed June 28, 2007; effective September 11, 2007.~~

0080-06-14-13 REPEALED.

~~**Authority:** T.C.A. §62-21-20. **Administrative History:** Original rule certified June 8, 1974. Repeal filed November 16, 1978; effective January 1, 1979.~~

~~**0080-06-14-14 REQUIREMENTS FOR LICENSEE IN AQUATIC WEED CONTROL.** Any person or government entity applying herbicides in state waters for the control of aquatic weeds must be under the direct supervision of one licensed in Aquatic Pest Control under the provisions of this chapter.~~

~~**Authority:** T.C.A. §62-21-118. **Administrative History:** Original rule filed January 23, 1995; effective May 31, 1995. Amendment filed June 28, 2007; effective September 11, 2007.~~

~~**0080-06-14-15 DENIAL, SUSPENSION OR REVOCATION OF LICENSE, CERTIFICATION OR PERMIT PENALTIES.**~~

- ~~(1) If the Commissioner has reason to believe the holder of a permit, license or certificate has violated any provision of this chapter, including its rules and regulations, or has used any aquatic pesticide in violation of the provisions of the "Tennessee Insecticide, Fungicide and Rodenticide Act", including its rules and regulations, the Commissioner shall conduct a hearing to determine if any license, certification or permit should be denied, revoked, suspended, or modified, and/or impose civil penalties of up to one thousand dollars (\$1,000) for each violation.~~

~~**Authority:** T.C.A. §62-21-118. **Administrative History:** Original rule filed January 23, 1995; effective May 31, 1995.~~

~~**0080-06-14-16 REQUIREMENTS FOR SPOT TREATMENT ONLY - LAWN MAINTENANCE.**~~

- ~~(1) Any person incidentally applying a herbicide with the sole active ingredient of Glyphosate for the control of weeds in conjunction with commercial lawn and landscape maintenance practices such as spot treatments adjacent to fencing, driveways, parking lots, cemetery markers and landscape borders and areas in lieu of or in conjunction with hand weeding or mechanical weed trimming and edging shall not be considered as applying a pesticide for a fee and shall not be required to be licensed as a commercial pest control operator when the person meets the following criteria:~~
 - ~~(a) The applicator has obtained certification by successfully completing (score of 70) an exam demonstrating general knowledge of pesticides including safety in~~

(Rule 0080-06-14, 16, continued)

~~handling, mixing and applying pesticides, environmental hazards in using pesticide, calculations, calibrations and label comprehension. The certification category created specifically for such application is to be known as "Limited Herbicide Applicator". Recertification requirements are stipulated in rule 0080-06-16-04. Any person exhibiting unethical behavior during an examination shall be ineligible to take another certification exam for two (2) years.~~

- ~~(b) The application equipment is limited to a single, hand held nozzle supplied by a tank with a maximum capacity of twenty-five (25) gallons; an electric or hand-powered pump with a maximum discharge rate of 1.5 gallons per minute; and a discharge hose no more than fifteen (15) feet long.~~
- ~~(c) The applicator or his or her employer has furnished proof of liability insurance with coverage for bodily injury and property damage of at least \$300,000 per occurrence and \$300,000 aggregate, including coverage for products/completed operations, and the policy has been endorsed to cover herbicide applications.~~
- ~~(d) The certificate number issued to the applicator is displayed in the upper right-hand corner of the applicator's vehicle used in the business or on both sides of any trailer used in the business. The name of the business shall be displayed on the right and left sides of all company vehicles or trailers. Lettering shall not be less than two inches (2") tall.~~
- ~~(e) Application records shall contain the date of application and the property address.~~
- (2) A person operating under this section is not authorized to:
 - (a) Advertise the application of herbicides or any other pesticide application.
 - (b) Supervise the application of any pesticide by an uncertified person.
- (3) ~~Persons certified as limited herbicide applicators are not required to obtain a business charter, bond, or license.~~
- (4) ~~A person is not required to meet the above requirements in order to apply a herbicide with the sole active ingredient of Glyphosate for the control of weeds in conjunction with lawn maintenance practices as spot treatments in lieu of, or in conjunction with, mechanical weed trimming or edging at a homeowner's or renter's residence when such product is stored, provided and mixed by the homeowner or renter requesting such service. The homeowner or renter is responsible for instructing the applicator as to how and where to apply the product.~~

Authority: T.C.A. § 62-21-118(a)(5). **Administrative History:** Original rule filed March 17, 2000; effective July 29, 2000.

Chapter 0080-06-15
Rules and Regulations Governing Commercial Aerial Application of Pesticides

Chapter 0080-06-15 Rules and Regulations Governing Commercial Aerial Application of Pesticides is repealed in its entirety.

Authority: T.C.A. §§ 4-3-203; 43-8-106; 62-21-118.

RULES
OF
TENNESSEE DEPARTMENT OF AGRICULTURE
DIVISION OF PLANT INDUSTRIES

CHAPTER 0080-6-15
RULES AND REGULATIONS GOVERNING COMMERCIAL AERIAL APPLICATION
OF PESTICIDES

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0080-6-15-.01	General Rules	0080-6-15-.02	Denial of License
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~~0080-6-15-.01 GENERAL RULES~~

- (1) ~~Any persons applying for a license as a Commercial Aerial Applicator shall be examined by the Commissioner to determine if the person has the necessary technical qualifications for the issuance of such license.~~
- (2) ~~A log record must be maintained for a period of 18 months and will be made available on demand to the Commissioner. The log record must show:~~
 - (a) ~~Pesticide used;~~
 - (b) ~~To what crop or plant applied;~~
 - (c) ~~The dosage rate;~~
 - (d) ~~The approximate acreage involved;~~
 - (e) ~~The location of the area where the pesticide is applied;~~
 - (f) ~~The landowner, producer, or other person employing such Aerial Applicator's services.~~
- (3) ~~The insurance required by T.C.A. §43-9-104 shall cover any liability arising from application of pesticide chemicals.~~
- (4) ~~All pesticide chemicals applied by Aerial Applicator shall be accomplished in a manner that is consistent with the labeling restrictions of the chemical being used. Each Aerial Applicator must submit evidence that such restrictions have been fully met when requested by the Commissioner.~~
- (5) ~~Any Aerial Applicator now holding a similar license under existing Tennessee law may renew such license without examination, but such renewed license will be subject to whatever restrictions are indicated by the license previously held.~~
- (6) ~~T.C.A. §43-9-105, provides that license may be suspended or revoked for violation of a promulgation rule and regulation.~~

Authority: T.C.A. §43-9-102. *Administrative History:* Original rule certified June 5, 1974. Amendment filed August 22, 1983; effective November 14, 1983. Amendment filed November 18, 1986; effective February 28, 1987.

~~0080-6-15-.02 DENIAL OF LICENSE: The Commissioner of Agriculture may deny licensing after proper hearing as a contested case under the "Administrative Procedures Act" (T.C.A. §4-514) for violation of any statute, rule or regulation concerning the use, purchase or sale of pesticides or for any violation of the commercial aerial application of "Pesticides Act".~~

~~*Authority: T.C.A. §43-2902 (1), (4), (10). Administrative History: Original rule certified June 5, 1974. Amendment filed August 22, 1983; effective November 14, 1983.*~~

Chapter 0080-06-16
Regulations Governing Use of Restricted Use Pesticides

Chapter 0080-06-16 Regulations Governing Use of Restricted Use Pesticides is repealed in its entirety.

Authority: T.C.A. §§ 4-3-203; 43-8-106; 62-21-118.

RULES
OF
DEPARTMENT OF AGRICULTURE
DIVISION OF PLANT INDUSTRIES

CHAPTER 0080-06-16
REGULATIONS GOVERNING USE OF
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~~0080-06-16-01 GENERAL.~~

- ~~(1) The Commissioner of Agriculture determines that the use and application of restricted use pesticides may affect public health and environment.~~
- ~~(2) To use, buy or sell restricted use pesticides, an individual must be certified by the Commissioner or hold a valid pest control operator's license or act under the direct supervision of a licensee or certificate holder.~~

~~**Authority:** T.C.A. § 62-2120(4). **Administrative History:** Original rule filed October 7, 1977; effective November 7, 1977.~~

~~0080-06-16-02 DEFINITIONS.~~

- ~~(1) Category means an area of licensing or certification for which commercial pest control operators of general or restricted use applicators are qualified.~~
- ~~(2) Certified Applicator means any individual who is certified by the Commissioner of Agriculture as authorized to use, buy, sell, or supervise the use of general or restricted use pesticides.~~
- ~~(3) Commercial Applicator means a person who uses, supervises the use of, sells, or buys restricted use pesticides for any purpose other than as defined under Private Applicator. Commercial applicators must be certified in the category of service being offered prior to taking the license examinations.~~
- ~~(4) Commercial Pest Control Operator means a person or business entity who engages in the custom application of pesticides or inspection of real property for the purpose of issuing a wood destroying insect inspection report and who has demonstrated to the satisfaction of the pest control licensing and advisory board such person's qualifications to design and direct pest control and inspection operations.~~
- ~~(5) Custom Application means the application of pesticides for a fee.~~
- ~~(6) External Training means training conducted outside of a pest control operator's place of business and open to anyone to attend or training conducted by an outside presenter who is not employed by the pest control company making the training request.~~

~~(Rule 0080-06-16-02, continued)~~

- ~~(7) General Use Pesticides means a pesticide that may be purchased and used by individuals without obtaining any certification or licensing.~~
- ~~(8) In-House Training means training that is conducted within the employer's place of business and attendance is limited to those employed by that specified company only. In-house training includes but is not limited to internet training, computer based CD-ROM training, or DVD training.~~
- ~~(9) Private Applicator means an individual who uses, supervises the use of, or buys any restricted use pesticide for the purposes of producing an agricultural commodity on property owned or rented by him or his employer or, if applied without compensation other than trading of personal services between producers of agricultural commodities, on the property of another person.~~
- ~~(10) Recertification means the authorization every three (3) years by the commissioner to use, supervise the use of, sell, or buy general or restricted use pesticides.~~
- ~~(11) Reciprocity means an agreement between the Tennessee Department of Agriculture and state(s) that have similar laws and regulations for the purpose of obtaining certification only. All associated fees are the responsibility of the applicator.~~
- ~~(12) Restricted Use Pesticide means any pesticide classified for restricted use by the Commissioner of Agriculture.~~
- ~~(13) Restricted Use Pesticide Dealer means an individual who is certified in the category of Pesticide Dealer and who wholesales or retails restricted use pesticides.~~
- ~~(14) Under the Direct Supervision means any application or sale of a pesticide by a certified applicator acting under the instructions and control of private applicator, commercial applicator, or commercial pest control operator who is available if needed. An application or sale is under the direct supervision of an applicator or operator if the applicator or operator is physically present or in direct communication by conventional means of communication.~~

~~**Authority:** T.C.A. §§ 43-8-106 and 62-21-118. **Administrative History:** Original rule filed October 7, 1977; effective November 7, 1977. Repeal and new rule filed March 31, 2014; effective June 29, 2014.~~

~~0080-06-16-03 CERTIFICATION REQUIREMENTS.~~

- ~~(1) Private Applicator Certification Requirements~~
 - ~~(a) Successfully complete a specialized training session provided by the University of Tennessee Extension Service teaching the proper use of restricted use pesticides. Send a copy of the three part form signed by the extension agent verifying the completion of training to the Tennessee Department of Agriculture with appropriate fees as outlined in T.C.A. § 43-1-703.~~
 - ~~(b) Be certified to use restricted use pesticides in any other state having comparable certification requirements. Individuals who hold a current certification from another state must apply for and receive a reciprocal Private Applicator card with the Tennessee Department of Agriculture.~~
 - ~~(c) Private applicator certification expires on October 21 of the 3rd year of the certification period.~~
 - ~~(d) All individuals must be 16 years of age and be a U.S. Citizen or possess a current VISA or other proof of qualified alien status prior to becoming privately certified.~~

~~(Rule 0080-06-16-03, continued)~~

~~(2) Commercial Pesticide Applicator Certification Requirements~~

- ~~(a) All individuals must be 16 years of age and be a U.S. Citizen or possess a current VISA or other proof of qualified alien status prior to becoming a commercial pesticide applicator.~~
- ~~(b) Complete a commercial certification exam application form and submit the form to the commissioner with appropriate fees as outlined in T.C.A. § 43-1-703.~~
- ~~(c) Individuals must score seventy (70) percent or higher to pass the commercial certification exam.~~
- ~~(d) Individuals who cannot take a scheduled examination due to circumstances beyond their control must contact the Department within forty eight (48) hours of the scheduled examination to reschedule or their examination fee shall be forfeited.~~
- ~~(e) Individuals who fail the certification exam will have a two (2) week waiting period before being rescheduled.~~
- ~~(f) Individuals exhibiting unethical behavior during an examination shall fail the test and be ineligible to take the certification exam for one (1) year.~~
- ~~(g) Individuals who possess a certification from another state that has a reciprocal agreement with the Tennessee Department of Agriculture will be issued a commercial pesticide applicator certification card. The applicant shall submit a copy of the front and back of the current applicator card issued by the reciprocating state along with the reciprocity application form furnished by the Tennessee Department of Agriculture.~~
- ~~(h) Commercial applicator certification expires on December 31st of the 3rd year of the certification period.~~

~~(3) Requirements for Certification as a Commercial Pest Control Operator.~~

- ~~(a) Anyone who charges a fee for custom application as a Commercial Pest Operator must hold a valid pest control operator's license.~~
- ~~(b) Any person desiring to be licensed as a Pest Control Operator must meet the requirements of T.C.A. §§ 62-21-101 et seq.~~
- ~~(c) Original certification expires at the end of five (5) years.~~

~~(4) Categories of Commercial Applicators and Commercial Pest Control Operators.~~

~~(a) Agricultural Pest Control (C01)~~

- ~~1. Description—This category includes commercial applicators using or supervising the use of general or restricted use pesticides in production of agricultural crops, including but not limited to tobacco, peanuts, cotton, feed grains, soybeans, forage, small fruits, tree fruits, nuts, grasslands, and noncrop agricultural land.~~
- ~~2. Standards of Competency—Applicators must demonstrate a practical knowledge of the crops grown and the specific pests of those crops on which they may be using restricted use pesticides. The importance of such competency is amplified by the extension areas involved, the quantities of pesticides needed, and the ultimate use of many commodities as food and feed. Practical knowledge is~~

(Rule 0080-06-16-03, continued)

~~required concerning soil and water problems, preharvest intervals, reentry intervals, phytotoxicity, and potential for environmental contamination, nontarget injury, and community problems resulting from the use of restricted use pesticides in agricultural areas.~~

(b) ~~Forest Pest Control (C02)~~

- ~~1. Description—This category includes commercial applicators using or supervising the use of general or restricted use pesticides to control pests in the forest, forest nurseries, and forest seed producing areas.~~
- ~~2. Standards of Competency—Applicators shall demonstrate practical knowledge of the types of forests, forest nurseries, and seed production in this State and the pests involved. They should possess practical knowledge of the cyclic occurrence of certain pests and specific population dynamics as a basis for programming pesticide applications. A practical knowledge is required of the relative biotic agents and their vulnerability to the pesticides to be applied. Because forest stands may be large and frequently include natural aquatic habitats and harbor wildlife, the consequences of pesticide use may be difficult to assess. The applicator must demonstrate practical knowledge of control methods that will minimize the possibility of secondary problems such as unintended effects on wildlife. Knowledge of proper use of specialized equipment must be demonstrated, especially as it may relate to meteorological factors and adjacent land use.~~

(c) ~~Ornamental and Turf Pest Control (C03)~~

- ~~1. Description—This category includes commercial applicators using or supervising the use of general or restricted use pesticides to control pests in the maintenance and production of ornamental trees, including fruit trees, shrubs, flowers, turf, residential and commercial lawns, golf greens, athletic fields, and the like.~~
- ~~2. Standards of Competency—Applicators shall demonstrate practical knowledge of pesticide problems associated with the production and maintenance of ornamental trees, shrubs, plantings, and turf, including cognizance of potential phytotoxicity due to a wide variety of plant material, drift, and persistence beyond the intended period of pest control. Because of the frequent proximity of human habitations to application activities, applicators in this category must demonstrate practical knowledge of application methods which will minimize or prevent hazards to humans, pets, and other animals.~~

(d) ~~Seed Treatment (C04)~~

- ~~1. Description—This category includes commercial applicators using or supervising the use of general or restricted use pesticides on seeds.~~
- ~~2. Standards of Competency—Applicators shall demonstrate practical knowledge of types of seeds that require chemical protection against pests and factors such as seed coloration, carriers, and surface active agents that influence pesticide binding and may affect germination. They must demonstrate practical knowledge of hazards associated with handling, sorting and mixing, and misuse of treated seed into feed and feed channels, as well as proper disposal of unused treated seeds.~~

(e) ~~Aquatic Pest Control (C05)~~

(Rule 0080-06-16-03, continued)

1. ~~Description—This category includes commercial applicators using or supervising the use of general or restricted use pesticides in aquatic environments.~~
 2. ~~Standards of Competency—Applicators shall demonstrate practical knowledge of the secondary effects, which can be caused by improper application rates, incorrect formulations, and faulty application, of restricted use pesticides used in this category. They shall demonstrate practical knowledge of various water use situations and the potential of downstream effects. Further, they must have practical knowledge concerning potential pesticide effects on plants, fish, birds, beneficial insects, and other organisms, which may be present in aquatic environments. These applicators shall demonstrate practical knowledge of the principles of limited area application.~~
- (f) ~~Right of Way Pest Control (G06)~~
4. ~~Description—This category includes commercial applicators using or supervising the use of general or restricted use pesticides to control pests in the maintenance of public roads, electric power lines, pipelines, railway rights of way, or other similar areas. This category includes the control of plants, whether woody or herbaceous, to industrial sites and rights of way including but not limited to highways, transmission lines, and drainage ditches.~~
 2. ~~Standards of Competency—Applicators shall demonstrate practical knowledge of a wide variety of environments since rights of way can traverse many different terrains, including waterways. They shall demonstrate practical knowledge of problems of runoff, drift, and excessive foliage destruction and ability to recognize target organisms. They shall also demonstrate practical knowledge of the nature of herbicides, the need for containment of these pesticides within the right of way area, and the impact of their application activities in the adjacent areas and communities.~~
- (g) ~~Industrial, Institutional, Structural and Health Related Pest Control (G07)~~
1. ~~Description—This category includes commercial applicators using or supervising the use of general or restricted use pesticides in, on, and around food handling establishments, human dwellings, institutions, such as schools and hospitals, industrial establishments, including warehouses and grain elevators, and any other structures and adjacent area, public or private. This category also includes pesticide application for the protection of stored, processed, or manufactured products. This category further includes the control of birds and rodents.~~
 2. ~~Standards of Competency—Applicators must demonstrate a practical knowledge of a wide variety of pests, including their life cycles, types of formulations appropriate for their control, and methods of application that avoid contamination of food, damage and contamination of habitat, and exposure of people and pets. Since human exposure, including babies, children, pregnant women, and elderly people, is frequently a potential problem, applicators must demonstrate practical knowledge of the specific factors which may lead to a hazardous condition, including continuous exposure in the various situations encountered in this category. Because health related pest control may involve outdoor applications, applicators must also demonstrate practical knowledge of environmental conditions particularly related to this activity.~~
- (h) ~~Public Health Pest Control (G08)~~

(Rule 0080-06-16-03, continued)

1. ~~Description—This category includes all governmental employees and commercial applicators that use or supervise the use of pesticides relative to public health programs on public land and public waters that are not specifically covered by other categories of certification described herein.~~
 2. ~~Standards of Competency—Applicators shall demonstrate practical knowledge of vector disease transmission as it relates to and influences application programs. It is essential to know and recognize the wide variety of pests involved in this field. It is also essential to understand the pests' life cycles and habitats to develop a control strategy. These applicators shall have practical knowledge of a great variety of environments ranging from streams to those conditions found in buildings. They should also have practical knowledge of the importance and employment of such nonchemical control methods as sanitation, waste disposal, and drainage.~~
- (i) ~~Demonstration and Research and Regulatory Pest Control (C10)~~
1. ~~Description—This category includes state, federal, or other governmental employees who recommend, use or supervise the use of general or restricted use pesticides in the control of regulated pests. This category also includes individuals who conduct or supervise public demonstrations of proper use and application techniques for general or restricted use pesticides and persons conducting field research with pesticides that, in doing so, use or supervise the use of general or restricted use pesticides. Included in the first group are persons such as extension specialists and county agents, commercial representatives demonstrating pesticide products, and those individuals demonstrating methods used in public programs. The second group includes state, federal, commercial, and other persons conducting field research on or utilizing restricted use pesticides.~~
 2. ~~Standards of Competency—Persons demonstrating the safe and effective use of pesticides to other applicators and the public will be expected to meet comprehensive standards reflecting a broad spectrum of pesticide uses. Many different pest problem situations will be encountered in the course of activities associated with demonstration, and practical knowledge of problems, pests, and population levels occurring in each demonstration situation is required. Further, they should demonstrate an understanding of pesticide-organism interactions and the importance of integrating pesticide use with other control methods. Applicators shall demonstrate practical knowledge of regulated pests, applicable laws relating to quarantine and other regulations of pests, and the potential impact on the environments of restricted use pesticides used in suppression and eradication programs. They shall demonstrate knowledge of factors influencing introduction, spread, and population dynamics of relevant pests. Their knowledge shall extend beyond that required by their immediate duties since their services are frequently in other areas of the country where emergency measures are invoked to control regulated pests and where individual judgments must be made in new situations.~~
- (j) ~~Wood Preservatives (C11)~~
1. ~~Description—In general, it is expected that applicators of this category possess a practical knowledge of the specific standards required for categories (C01) through (C07) applicable to their particular activity. In addition, they shall meet the specific standards required for categories (C01) through (C07) of this section as may be applicable to that particular activity. Including the use or supervising the use of general or restricted pesticides.~~

(Rule 0080-06-16 .03, continued)

2. ~~Standards of Competency—Producers and applicators shall demonstrate practical and technical knowledge of wood preservatives. They should demonstrate knowledge in the type of pests being controlled. They must also demonstrate practical knowledge in the methods of applying the preservatives to wood. Applicators should have knowledge of types of safety equipment necessary to protect those involved in the application as well as the aftereffects of application to plants, humans, pets, and other domestic animals.~~

~~(k) Pesticide Dealers (C12)~~

1. ~~Description—This category is for persons who are engaged in wholesale or retail sales of restricted use pesticides. Each dealer location selling restricted use pesticides must have a certified dealer at that location. Each certified dealer shall be responsible for the actions of every person who acts as the dealer's employee or agent in the sale of restricted use pesticides. Persons holding a current Pesticide Dealer certification are allowed to purchase and use restricted use pesticides. This category does not allow for custom application of pesticides.~~
2. ~~Standards of Competency—Pesticide Dealers shall demonstrate the practical knowledge to advise applicators and the public on the safe and effective use of pesticides. They shall also be expected to meet comprehensive standards reflecting a broad knowledge of pesticide uses. They shall also demonstrate an understanding of pesticide-organism interactions and the importance of integrating pesticide use with other control methods.~~

~~(l) Antifouling Marine Paint (C13)~~

1. ~~Description—This category includes commercial applicators using or supervising the use of general or restricted use antifouling marine paints.~~
2. ~~Standards of Competency—Applicators shall demonstrate practical knowledge of tributyltin product labels and understand why they are classified as restricted use pesticides. Applicators shall demonstrate knowledge of the health and environmental hazards associated with the use of antifouling paints. They shall demonstrate practical knowledge of the application and testing equipment and have knowledge of the need and use of personal protective equipment. In addition, applicators will demonstrate knowledge of proper storage, handling, transport, and disposal, including disposal of excess material, waste, and containers.~~

~~(m) Microbial Pest Control (C14)~~

1. ~~Description—This category includes commercial applicators using or supervising the use of general or restricted pesticides to control microorganisms (bacteria, fungi, algae, and viruses) in cooling towers and water treatment plants. This category also includes application in restoration treatments targeting mold and fungus.~~
2. ~~Standards of Competency—Applicators shall demonstrate practical knowledge of antimicrobial agents in the control of bacteria, fungi, algae and viruses. Applicators shall demonstrate knowledge of the health and environmental hazards associated with the use of antimicrobial agents in cooling towers, water treatment plants, and restoration treatments targeting mold and fungus. They shall demonstrate practical knowledge of the application and testing equipment and have knowledge of the need and use of personal protective equipment. They~~

(Rule 0080-06-16 .03, continued)

shall also demonstrate knowledge of proper storage, handling, transport and disposal including disposal of excess material, waste, and containers.

(n) Sewer Line Treatment (C16)

- 1- Description—This category includes commercial applicators using or supervising the use of general or restricted use pesticides in sewer lines and wastewater treatment facilities.
- 2- Standards of Competency—Applicators shall demonstrate the practical knowledge of metam sodium products for root control. Applicators shall demonstrate knowledge of health and environmental hazards associated with metam sodium in sewer lines and wastewater treatment facilities. They shall demonstrate practical knowledge of the need to use personal protective equipment. In addition, applicators will demonstrate the knowledge of proper storage, handling, transport, spills, cleanup, and waste disposal.

Authority: T.C.A. §§ 43-8-106 and 62-21-118. **Administrative History:** Original rule filed October 7, 1977; effective November 7, 1977. Amendment filed April 26, 1994; effective August 28, 1994. Amendment filed October 28, 2002; effective February 28, 2003. Repeal and new rule filed March 31, 2014; effective June 29, 2014.

0080-06-16 .04 RECERTIFICATION REQUIREMENTS.

- (1) After original certification expires, one must be recertified to use, apply, supervise, sell, or buy restricted use pesticides.

(2) Private Applicator Recertification Requirements

Private Applicator—Successfully complete an instructional course offered by the University of Tennessee Extension Service beginning in January of the last year in the current certification period. Private Applicator certification shall expire on October 24st every third year.

(3) Commercial Pesticide Applicator Certification Recertification Requirements

- (a) All commercial pesticide applicators shall obtain the required continuing education credits (CEU's) in the category of certification or retest in the same category to maintain certification.
- (b) Individuals becoming certified on or after July 1st of the third (3rd) year of the certification period will be rolled over to the next three year recertification period.
- (c) Each certification category shall require the following continuing education credits:
 1. Thirty (30) CEU's for certification category: C07—Industrial, Institutional, Structural and Health Related Pest Control.
 2. Eighteen (18) CEU's for certification categories: C01—Agricultural Plant and Animal, C03—Ornamental Turf, C06 Right of Way, C08—Public Health, C10—Demonstration, Research and Regulatory Pest Control and C12—Pesticide Dealer and LHA (Limited Herbicide Applicator)
 3. Twelve (12) CEU's for certification categories: C02—Forest Pest Control, C04—Seed Treatment, and C05—Aquatic Pest Control.

(Rule 0080-06-16-04, continued)

4. ~~Nine (9) CEU's for certification categories: C11—Wood Preservatives, C13—Antifouling Marine Paint, C14—Microbials, and C16—Sewer Line Treatment.~~
- (d) ~~Continuing Education Units shall be prorated for those becoming certified during the recertification period.~~
- (e) ~~Continuing Education Units shall only be awarded for electronic media used in conjunction with a presentation as part of In house training.~~
- (f) ~~Applications submitted by industry for training are required to be in the Tennessee Department of Agriculture office no later than 30 days prior to the date of the training session. Applications submitted by educational institutions shall be submitted to the University of Tennessee, Pesticide Safety Education Program (PSEP).~~
- (g) ~~All attendance rosters from industry and educational institutions are required to be submitted to the Department no later than 30 days after training. If training rosters are not received, sponsors and/or facilitators may not be approved for future training.~~
- (h) ~~The sponsor shall permit representatives from the Department or PSEP employees to attend training sessions without being assessed registration fees.~~
- (i) ~~One (1) continuing education unit shall be warranted per hour for certification related topics.~~
- (j) ~~In house points will be limited to 50% of the total CEU requirement. Individuals may accrue half of their CEU's internally and the remaining half externally or accrue all of their CEU's by attending external meetings.~~
- (k) ~~No more than 75% of the required continuing education units shall be accrued at any one external meeting.~~
- (l) ~~Applicators shall be required to retest the third year if the required number of continuing education units is not obtained prior to the expiration date.~~
- (m) ~~Applicators shall notify the Department in writing if there is a change in name or address.~~
- (n) ~~Commercial Pesticide Applicator recertification shall expire every third year on December 31.~~

Authority: ~~T.C.A. §§ 43-8-106 and 62-21-118~~ **Administrative History:** ~~Original rule filed October 7, 1977; effective November 7, 1977. Amendment filed October 26, 1988; effective December 10, 1988. Amendment filed October 28, 2002; effective February 28, 2003. Repeal and new rule filed March 31, 2014; effective June 29, 2014.~~

0080-06-16-05 RECORD KEEPINGS.

~~G.F.R. Title 7, Subtitle B, Chapter 1, Subchapter E, Part 110—Recordkeeping on Restricted Use Pesticides By Certified Applicators; Surveys and Reports is adopted by reference by the Department of Agriculture as the state standards for pesticide recordkeeping for private applicators using restricted use pesticides.~~

Authority: ~~T.C.A. §§ 43-8-106 and 62-21-118.~~ **Administrative History:** ~~Original rule filed October 7, 1977; effective November 7, 1977. Repeal and new rule filed March 31, 2014; effective June 29, 2014.~~

~~0080-06-16-.06 DENIAL, SUSPENSION OR REVOCATION OF CERTIFICATION.~~ The Commissioner of Agriculture may revoke, suspend, or deny certification or licenses after proper hearing as a contested case under the "Administrative Procedures Act" (T.C.A. 4-5-14), for violation of any statute, rule or regulation concerning the use, purchase or sale of pesticides.

~~Authority:~~ T.C.A. § 62-2120(4). ~~Administrative History:~~ Original rule filed October 7, 1977; effective November 7, 1977.

~~0080-06-16-.07 USE OF RESTRICTED USE PESTICIDES.~~

- ~~(1) No one may use or buy a restricted use pesticide unless certified as a Private Applicator or a Commercial Applicator, or unless licensed as a Commercial Pest Control Operator by the Commissioner of Agriculture.~~
- ~~(2) No person shall use a pesticide in a manner inconsistent with its labeling.~~
- ~~(3) No person shall act as a private applicator unless he is certified as such by the Commissioner of Agriculture.~~
- ~~(4) No person shall act as a commercial applicator unless certified by the Commissioner of Agriculture as such and he may only act in the category in which he is certified.~~
- ~~(5) No person shall act as a Commercial Pest Control Operator unless he holds a valid Pest Control Operators license and may only act in the subcategory which he is licensed.~~
- ~~(6) No one holding a Pesticide Dealer certification shall sell, or allow the sale of, a restricted use pesticide to a noncertified person.~~
- ~~(7) No one shall sell restricted use pesticides until that person is certified in the category of Pesticide Dealer and has obtained a Restricted Use Pesticide Dealer's license.~~
- ~~(8) Restricted use pesticide sales records shall be submitted yearly with the renewal for Pesticide Dealer license.~~

~~Authority:~~ T.C.A. §§ 43-8-106, 62-2-120(4), and 62-21-118. ~~Administrative History:~~ Original rule filed October 7, 1977. Amendment filed March 31, 2014; effective June 29, 2014.

~~0080-06-16-.08 EXEMPTIONS.~~ Individuals licensed under T.C.A. 43-2901 et seq. are exempt from the provisions of these regulations while engaged in the commercial aerial application of pesticides.

~~Authority:~~ T.C.A. §§ 62-2120(4). ~~Administrative History:~~ Original rule filed October 7, 1977; effective November 7, 1977.

~~0080-06-16-.09 CIVIL FINE SCHEDULE.~~ Pursuant to the provisions of T.C.A. § 4-3-204(b), the following shall be the minimum and maximum amounts to be imposed as civil penalties for violations of the "Tennessee Insecticide, Fungicide and Rodenticide Act."

(1) LABEL VIOLATIONS	MINIMUM	MAXIMUM
(a) Lacks Signal Word or Caution: Keep out of Reach of Children	\$100.00	\$500.00
(b) Lacks Required Precautionary Labeling	\$100.00	\$500.00
(c) Deficient Precautionary Statements: Lacks Symbols or Statements	\$100.00	\$500.00

RESTRICTION GOVERNING USE OF RESTRICTED USE PESTICIDES

CHAPTER 0080-06-16

(Rule 0080-06-16 .09, continued)

(d)	Directions for Use.	\$100.00	\$500.00
(e)	Defective Ingredient Statement	\$100.00	\$500.00
(f)	Failure to Bear Required Statement of Net Weight or Content	\$50.00	\$500.00
(g)	Failure to Bear Name and Address of Producer, Registrant or Person for Whom Manufactured	\$50.00	\$500.00
(h)	Labeling Is Detached, Altered, Defaced or Destroyed	\$100.00	\$500.00
(i)	Ingredient Statement Absent on Immediate Container	\$100.00	\$500.00
(j)	Ingredient Statement Does Not Appear on Front Panel of Immediate Container	\$50.00	\$500.00
(k)	Label Does Not Bear a Registration Number or Established Number	\$50.00	\$500.00
(l)	Net Weight Not Stated on Label	\$50.00	\$500.00
(m)	Label Does Not Bear Name, Brand, or Trademark under Which Product Was Sold	\$50.00	\$500.00
(2)	FORMULATION VIOLATIONS		
(a)	Chemical Deficiencies	\$100.00	\$500.00
(b)	Net Weight	\$100.00	\$500.00
(c)	Chemical Contamination	\$100.00	\$500.00
(d)	Over-Formulated	\$250.00	\$500.00
(3)	USE VIOLATIONS		
(a)	Use or Disposal of a Pesticide in a Manner Inconsistent with Its Labeling	\$250.00	\$500.00
(b)	Violation of Stop Sale, Use or Removal Order	\$250.00	\$500.00
(4)	RECORDS, BOOKS, DOCUMENTATION		
(a)	Failure to Maintain as Required By TIFRA and FIFRA	\$100.00	\$500.00
(b)	Failure to Produce for Inspection	\$250.00	\$500.00
(5)	REGISTRATION OF PRODUCTS		
(a)	Failure to Have Products Registered	\$100.00	\$500.00

Authority: ~~T.C.A. §§ 43-8-106 and 62-21-118. Administrative History: Original rule filed April 28, 1992; effective June 12, 1992. Repeal and new rule filed March 31, 2014; effective June 29, 2014.~~

~~0080-06-16 .10 PESTICIDE MANAGEMENT AND DISPOSAL~~

- ~~(1) The Department of Agriculture adopts herein by reference the current versions of 40 C.F.R. Part 165, Subpart A.~~
- ~~(2) The Department of Agriculture adopts herein by reference the current version of 40 C.F.R. Part 165, Subpart E, as the State standards for pesticide containment structures.~~

~~**Authority:** T.C.A. §§ 43-8-106 and 62-21-118. **Administrative History:** Original rule filed March 31, 2014; effective June 29, 2014.~~

Chapter 0080-06-27
Worker Protection

Chapter 0080-06-27 Worker Protection is repealed in its entirety.

Authority: T.C.A. §§ 4-3-203; 43-8-106; 62-21-118.

**RULES
OF THE
TENNESSEE DEPARTMENT OF AGRICULTURE**

**CHAPTER 0080-06-27
WORKER PROTECTION**

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~~0080-06-27-.01 DEFINITIONS.~~

~~Farm Labor Contractor means any person who hires or contracts for services of workers, for any type of compensation, to perform activities related to the production of agricultural plants, but does not own, or is not responsible for, the management or condition of the agricultural establishment.~~

~~**Authority:** T.C.A. §§ 43-8-106 and 62-21-118. **Administrative History:** Original rule filed March 31, 2014; effective June 29, 2014.~~

~~0080-06-27-.02 WORKER PROTECTION STANDARD (WPS).~~

~~The Commissioner of Agriculture adopts by reference, including subsequent amendments, Part 170 of Title 40 of the Code of Federal Regulations titled Worker Protection Standards and Part 156 Subpart K of the Code of Federal Regulations titled Worker Protection Statements.~~

~~**Authority:** T.C.A. §§ 43-8-106 and 62-21-118. **Administrative History:** Original rule filed March 31, 2014; effective June 29, 2014.~~

~~0080-06-27-.03 WPS TRAINER REQUIREMENTS.~~

- ~~(1) Persons currently certified as a private applicator of restricted use pesticides or as a commercial applicator in categories C01, C03, or C10 are exempt from the pesticide safety trainer requirements and may provide WPS training required in 40 C.F.R. §170.130(d)(1) and §170.230(e)(1).~~
- ~~(2) A trainer shall submit a signed roster to the Department verifying that workers and handlers have been trained according to the requirements of 40 C.F.R. §170.130(d)(1) and §170.230(e)(1). The roster shall include the following:
 - ~~(a) The name, address, telephone number, and signature of the applicant; and~~
 - ~~(b) The date of the training.~~~~
- ~~(3) The commissioner or designee shall be permitted to inspect places where WPS training is being held and to question trainers and attendees to determine compliance with the requirements of this Section.~~
- ~~(4) The following may be grounds for suspension, revocation, or denial of WPS Trainer privileges:
 - ~~(a) failing to follow the worker and handler training requirements prescribed in 40 C.F.R. §170.130(d)(1), §170.130(4), §170.230(e)(1) and §170.230(4);~~
 - ~~(b) failing to maintain the training information prescribed in 0080-6-27-.03(2);~~~~

~~(Rule 0080-06-27 .03, continued)~~

- ~~(c) acting as a trainer without authorization;~~
- ~~(d) failing to fulfill the requirements of the verification as prescribed in paragraph (2); or~~
- ~~(e) having had a similar authorization revoked, suspended, or denied in any jurisdiction within the last three years.~~

~~**Authority:** T.C.A. §§ 43-8-106 and 62-21-118. **Administrative History:** Original rule filed March 31, 2014; effective June 29, 2014.~~

~~**0080-06-27 .04 NOTICE TO FARM LABOR CONTRACTORS.**~~

- ~~(1) The owner or operator of an agricultural establishment shall provide the farm labor contractor who performs work on that agricultural establishment with:~~
 - ~~(a) the location of the agricultural establishment's central posting site; and~~
 - ~~(b) the restrictions on entering a treated area, as specified in 40 C.F.R. § 170.120(d), if a treated area is within 1/4 mile of where workers will be working and the treated area is not posted as allowed or required in 40 C.F.R. § 170.120(a), (b) and (c).~~
- ~~(2) The farm labor contractor shall:~~
 - ~~(a) post or provide workers in writing with the information in 40 C.F.R. § 170.122 or the specific location of the central posting site for each agricultural establishment on which the worker will be working;~~
 - ~~(b) provide workers with restrictions on entering a treated area, as specified in 40 C.F.R. § 170.120(d), if the treated area is within 1/4 mile of where the worker is working and the treated area is not posted as allowed or required in 40 C.F.R. § 170.120(a), (b) and (c).~~

~~**Authority:** T.C.A. §§ 43-8-106 and 62-21-118. **Administrative History:** Original rule filed March 31, 2014; effective June 29, 2014.~~

New

Division 0080-09 Pesticides is created.

Authority: T.C.A. §4-3-203.

Chapter 0080-09-01
Classification of Pesticides

0080-09-01-.01 Reserved

Authority: T.C.A. §§ 4-3-203; 43-8-106; 62-21-118.

Chapter 0080-09-02
Restricted Use Pesticides

0080-09-02-.01 Scope

- (1) This chapter applies to any person who buys, sells, or uses a restricted use pesticide.
- (2) Any person who buys, sells, or uses a restricted use pesticide must be licensed by the department as a commercial pest control operator, certified by the department as a certified applicator, or acting under the direct supervision of a license or certificate holder.

Authority: T.C.A. §§ 4-3-203; 43-8-106; 62-21-118.

0080-09-02-.02 Definitions

- (1) Terms in this chapter share those meanings of terms set forth in the Tennessee Insecticide, Fungicide, and Rodenticide Act, compiled in title 43, chapter 8, parts 1 and 2 of the Tennessee Code, and the Tennessee Application of Pesticides Act of 1978, compiled in title 62, chapter 21 of the Tennessee Code.
- (2) When used in this chapter, unless the context requires otherwise:
 - (a) Act means the Tennessee Insecticide, Fungicide, and Rodenticide Act and the Tennessee Application of Pesticides Act of 1978, collectively or individually;
 - (b) Commercial applicator means a person who uses, supervises the use of, sells, or buys restricted use or general use pesticides for any purpose other than as defined under Private Applicator. Commercial applicators must be certified in the category of service being offered prior to taking its license examination;
 - (c) External training means:
 1. Training that is conducted outside of a commercial pest control operator's place of business;
 2. Training that is open to the public; or,
 3. Training that is conducted by a presenter who is not employed by the pest control operator requesting continuing education credit for the training.
 - (d) General use pesticide means a pesticide that may be purchased and used by individuals without obtaining prior certification or licensing;

- (e) In-house training means training that is conducted within the employer's place of business and attendance is limited to those persons employed by that employer. In-house training may include but is not limited to satellite attendance through the use of internet, computer software, or video presentations;
- (f) Reciprocity or words of similar import refer to an agreement or recognition of an agreement between the department and another state for the purpose of mutually accepting each state's certification of a certified applicator;
- (g) Restricted use pesticide dealer means an individual who is certified in the category of Pesticide Dealer and who sells or offers for sale restricted use pesticides.

Authority: T.C.A. §§ 4-3-203; 43-8-106; 62-21-118.

0080-09-02-.03 Certification Requirements

- (1) Applicants for certification as a private applicator or commercial applicator must be 16 years of age or older and be a United States citizen or possess current proof of qualified alien status prior to receiving certification.
- (2) All certifications issued under this rule shall expire on June 30 of the third year of the certification period in which the certification was issued.
- (3) Private Applicator Certification.
 - (a) Applicants for private applicator certification from the department must successfully complete a specialized training course provided by the University of Tennessee Extension Service on the proper use of restricted use pesticides. Applicants must submit to the department a copy of the three-part form signed by the extension agent verifying completion of the training course and payment of a Tier 1 certification fee under T.C.A. §43-1-703(f).
 - (b) Applicants for private applicator certification under reciprocity with another state must hold valid certification in the reciprocating state and must submit application to the department for a reciprocal Private Applicator card.
- (4) Commercial Applicator Certification.
 - (a) Applicants for commercial applicator certification from the department must submit a completed application to sit for a commercial certification exam in the certification category(ies) of service in which the applicator desires to engage.
 - 1. Applicants must remit with their application payment of a Tier 1 examination fee under T.C.A. §43-1-703(f) for each exam to be taken by the applicant.
 - 2. Applicants must score 70% or higher on the commercial certification exam. Individuals who score below 70% are ineligible to retake the exam for two weeks.
 - 3. Applicants who exhibit unethical behavior during the commercial certification exam shall immediately fail the exam and are ineligible to retake the exam for one year.
 - 4. An applicant who cannot take a scheduled exam due to circumstances beyond his control may reschedule the exam without payment of an additional examination fee, provided that the applicant contact the department more than 48 hours prior to the previously scheduled exam. Applicants who reschedule an exam with less than 48 hours' notice shall forfeit the examination fee for the previously scheduled exam.

- (b) Applicants for commercial applicator certification under reciprocity with another state must hold valid certification in the reciprocating state. Applicants must also submit to the department an application for reciprocity and a copy of the front and back of the commercial applicator card issued by the reciprocating state.

Authority: T.C.A. §§ 4-3-203; 43-1-703; 43-8-106; 43-8-113; 62-21-118.

0080-09-02-.04 License Requirements

- (1) Any person who offers or performs custom applications of pesticide as a commercial pest control operator must hold a valid pest control operator's license.
- (2) Applicants for licensure as a commercial pest control operator must, prior to sitting for the license exam, be certified as a commercial applicator in the category of service to be offered.
- (3) Applicants for licensure as a commercial pest control operator must meet all applicable requirements of the Act.
- (4) Applicants for licensure as a commercial pest control operator must remit to the department payment of a Tier 2 biennial license fee under T.C.A. §43-1-703(f) for each category license held by the applicant. Applicants for any pesticide dealer license must remit to the department payment of a Tier 2 annual license fee under T.C.A. §43-1-703(f) for each location where restricted use pesticides are sold or offered for sale at wholesale or retail.
- (5) Commercial pest control operator licenses shall expire on June 30 of the second year following their issuance. Pesticide dealer licenses shall expire on June 30 following their issuance.

Authority: T.C.A. §§ 4-3-203; 43-1-703; 43-8-106; 62-21-111; 62-21-118.

0080-09-02-.05 Certification Categories

- (1) Agricultural Pest Control (C01).
 - (a) Description. This category includes commercial applicators who use or supervise the use of general or restricted use pesticides in production of agricultural crops, including but not limited to tobacco, peanuts, cotton, feed grains, soybeans, forage, small fruits, tree fruits, nuts, grasslands, and non-crop agricultural land.
 - (b) Standards of competency. Applicators must demonstrate a practical knowledge of: the crops on which the applicator may be using restricted use pesticides and the pests incident to those crops; soil and water problems; pre-harvest intervals; re-entry intervals; phytotoxicity; potential for environmental contamination; non-target injury; and community problems resulting from the use of restricted use pesticides in agricultural areas.
- (2) Forest Pest Control (C02).
 - (a) Description. This category includes commercial applicators who use or supervise the use of general or restricted use pesticides to control pests in forests, forest nurseries, and forest seed producing areas.
 - (b) Standards of competency. Applicators must demonstrate practical knowledge of: the types of forests, forest nurseries, and seed production in the state and the pests incident to those areas; the cyclic occurrence of certain pests and specific population dynamics that are basic to programming pesticide applications; relative biotic agents and their vulnerability to specific pesticides; control methods to minimize unintended effects of pesticide application; and proper

use of specialized equipment, particularly as it may relate to meteorological factors and adjacent land use.

(3) Ornamental and Turf Pest Control (C03).

- (a) Description. This category includes commercial applicators who use or supervise the use of general or restricted use pesticides to control pests in the maintenance and production of ornamental trees, plants, and grasses, including but not limited to fruit trees, shrubs, flowers, turf, residential and commercial lawns, golf courses, and athletic fields.
- (b) Standards of competency. Applicators must demonstrate practical knowledge of: pesticide problems associated with the production and maintenance of ornamental trees, shrubs, plantings, and turf; awareness of potential phytotoxicity due to a wide variety of plant material, drift, and persistence of pesticide chemicals beyond the intended period of pest control; and application methods that minimize or prevent potential hazards to humans, pets, and other animals.

(4) Seed Treatment (C04).

- (a) Description. This category includes commercial applicators who use or supervise the use of general or restricted use pesticides on seeds.
- (b) Standards of competency. Applicators must demonstrate practical knowledge of: types of seeds that require chemical protection against pests; seed coloration; carriers; surface active agents that influence pesticide binding; factors that may affect germination; hazards associated with handling, sorting, and mixing of treated seed; misuse of treated seed into food and feed channels; and proper disposal of unused treated seeds.

(5) Aquatic Pest Control (C05).

- (a) Description. This category includes commercial applicators who use or supervise the use of general or restricted use pesticides in aquatic environments.
- (b) Standards of competency. Applicators must demonstrate practical knowledge of: secondary effects of restricted use pesticides, including but not limited to those effects caused by improper application rates, incorrect formulations, and faulty application; various water-use situations; potential for downstream effects; effects on plants, fish, birds, beneficial insects, and other organisms present in aquatic environments; and principles of limited-area application.

(6) Right-of-Way Pest Control (C06).

- (a) Description. This category includes commercial applicators who use or supervise the use of general or restricted use pesticides to control pests in the maintenance of public roads, electric power lines, pipelines, railway rights-of-way, industrial sites, highways, transmission lines, drainage ditches, and the like. This category includes the control of plants, whether woody or herbaceous.
- (b) Standards of competency. Applicators must demonstrate practical knowledge of: a wide variety of environments where rights-of-way may be treated; problems with runoff, drift, and excessive foliage destruction; ability to recognize target organisms; the nature of herbicides; the need for herbicide containment within the right-of-way; and the impact of herbicide application to adjacent areas and communities.

(7) Industrial, Institutional, Structural and Health Related Pest Control (C07).

- (a) Description. This category includes commercial applicators who use or supervise the use of general or restricted use pesticides in, on, or around food-handling establishments, human dwellings, schools, hospitals, industrial establishments, warehouses, grain elevators, and any other similar institutions, facilities, structures or adjacent areas, public or private. Schools refer to child-serving facilities, for children through 12th grade, public or private. Children are

physiologically more vulnerable to pesticides. Children can spend long hours at school and therefore have an increased risk of pesticide exposure if pesticides have been applied in a manner incompatible with integrated pest management (IPM). This category also includes pesticide application for the protection of stored, processed, or manufactured products, and the control of birds, imported fire ants, or rodents.

- (b) Standards of competency. Applicators must demonstrate a practical knowledge of: a wide variety of pests and their life cycles; types of formulations appropriate for their pest control; methods of application to avoid contamination of food, damage or contamination of habitat, and exposure of people and pets; specific factors that may lead to a hazardous condition, including continuous exposure; and environmental conditions related to the activity of this category. In addition, applicators should be knowledgeable about the components in an Integrated Pest Management (IPM) program in child-serving facilities. Integrated Pest Management is a process for achieving long-term, environmentally sound, pest suppression by using a variety of technologies and management practices including preventing pest populations using sanitation, exclusion and habitat modification and applying pesticides in the least hazardous manner only when needed to correct verified problems to manage targeted pests effectively and economically.
- (8) Public Health Pest Control (C08).
- (a) Description. This category includes all governmental employees and commercial applicators who use or supervise the use of pesticides relative to public health programs on public land and public waters that are not specifically covered by other categories of certification described under this rule.
 - (b) Standards of competency. Applicators must demonstrate practical knowledge of: vector-disease transmission as it relates to and influences application programs; pests incident to this field; understanding of the pests' life cycles and habitats necessary to develop a control strategy; a great variety of environments ranging from streams to conditions found in buildings; and nonchemical control methods such as sanitation, waste disposal, and drainage.
- (9) Limited Herbicide Applicator.
- (a) Description. This category includes persons who incidentally apply herbicide with the sole active ingredient Glyphosate for the control of weeds in conjunction with commercial lawn and landscape maintenance practices such as spot treatments adjacent to fencing, driveways, parking lots, cemetery markers and landscape borders, and areas in lieu of or in conjunction with hand-weeding or mechanical weed trimming and edging.
 - (b) Standards of competency. Applicators must demonstrate practical knowledge of: safety in handling, mixing, and applying pesticides; environmental hazards in using pesticides; calculations; calibrations; and label comprehension.
- (10) Demonstration, Research, and Regulatory Pest Control (C10).
- (a) Description. This category includes state, federal, and other governmental employees, including but not limited to extension specialists and county agents, who recommend, use, or supervise the use of general or restricted use pesticides in the control of regulated pests. This category also includes individuals, including but not limited to commercial representatives demonstrating pesticide products and application methods, who conduct or supervise public demonstrations of proper use and application techniques for general or restricted use pesticides. This category also includes persons, including but not limited to state, federal, commercial, and other agents, who use or supervise the use of general or restricted use pesticides in the conduct of field research.
 - (b) Standards of competency. Persons demonstrating the safe and effective use of pesticides to other applicators and the public must meet comprehensive standards reflecting a broad spectrum of pesticide uses. Many different pest problem situations will be encountered in the course of activities associated with demonstration, and practical knowledge is required regarding problems, pests, and population levels occurring in each demonstration situation. Persons in this category

must also demonstrate an understanding of pesticide-organism interactions and the importance of integrating pesticide use with other control methods. Applicators shall demonstrate practical knowledge of regulated pests, applicable laws relating to quarantine and other regulation of pests, and the potential impact on the environment by restricted use pesticides used in suppression and eradication programs. Persons in this category shall also demonstrate knowledge of factors influencing introduction, spread, and population dynamics of relevant pests. Required knowledge shall extend beyond that required by the persons' immediate duties because their services are frequently used in other areas of the country where emergency measures are invoked to control regulated pests and where individual judgments must be made in new situations.

(11) Wood Preservatives (C11).

- (a) Description. Applicators in this category must demonstrate practical knowledge of, and shall meet, the specific standards required for categories (C01) through (C07) that are applicable to the applicator's particular activity, including the use or supervision of use of general or restricted use pesticides.
- (b) Standards of competency. Applicators must demonstrate practical and technical knowledge of: wood preservatives; the type of pests controlled by the preservatives; methods of applying preservatives to wood; safety equipment necessary to protect persons involved in application of the preservatives; and the after effects of applications as they pertain to plants, humans, pets, and other domestic animals.

(12) Pesticide Dealers (C12).

- (a) Description. For each location where restricted use pesticides are sold at wholesale or retail, a person licensed as a pesticide dealer must be employed at the location. The licensed pesticide dealer shall bear responsibility for the actions of every person at the location who sells restricted use pesticides. Persons holding a Pesticide Dealer certification are permitted to purchase and use restricted use pesticides. However, a Pesticide Dealer certification does not permit custom applications of pesticides.
- (b) Standards of competency. Pesticide dealers must demonstrate practical knowledge necessary to advise applicators and the public on the safe and effective use of pesticides. Pesticide dealers must meet comprehensive standards reflecting a broad knowledge of pesticide uses. Pesticide dealers must also demonstrate an understanding of pesticide-organism interactions and the importance of integrating pesticide use with other control methods.

(13) Antifouling Marine Paint (C13).

- (a) Description. This category includes commercial applicators who use or supervise the use of general or restricted use antifouling marine paints.
- (b) Standards of competency. Applicators must demonstrate practical knowledge of: tributyltin product labels and understanding of why the products are classified as restricted use pesticides; health and environmental hazards associated with the use of antifouling paints; application, testing equipment, and personal protective equipment associated with antifouling paints; and proper storage, handling, transport, and disposal of antifouling paints, including disposal of excess material, waste, and containers.

(14) Microbial Pest Control (C14).

- (a) Description. This category includes commercial applicators who use or supervise the use of general or restricted use pesticides to control microorganisms, e.g. bacteria, fungi, algae, and viruses, in industrial cooling towers, air washers, evaporative condensers, pulp and paper mills, sewer treatment facilities, cutting tool lubricants, potable water systems, and other similar structures or facilities.

- (b) Standards of competency. Applicators must demonstrate practical knowledge of: antimicrobial agents in the control of bacteria, fungi, algae, and viruses; health and environmental hazards associated with the use of antimicrobial agents in cooling towers, water treatment plants, and restoration treatments targeting mold and fungus; application, testing equipment, and personal protective equipment associated with the use of antimicrobial agents; and proper storage, handling, transport, and disposal of antimicrobial agents, including disposal of excess material, waste, and containers.
- (15) Reserved.
- (16) Sewer Line Treatment (C16).
 - (a) Description. This category includes commercial applicators who use or supervise the use of general or restricted use pesticides in sewer lines and wastewater treatment facilities.
 - (b) Standards of competency. Applicators must demonstrate practical knowledge of: metam-sodium products for root control; health and environmental hazards associated with metam-sodium in sewer lines and wastewater treatment facilities; personal protective equipment associated with use of metam-sodium products; and proper storage, handling, transport, spills cleanup, and waste disposal of metam-sodium products.

Authority: T.C.A. §§ 4-3-203; 43-8-106; 62-21-118.

0080-09-02-.06 Recertification Requirements

- (1) Recertification of any private applicator or commercial applicator shall expire on June 30 of every third year.
- (2) Certified applicators must notify the department in writing of any change to their name or address within 30 days after the change takes place.
- (3) Private Applicator. To obtain recertification, a private applicator must successfully complete an instructional course offered by the University of Tennessee Extension Service in the last calendar year during which the applicator's certification is valid.
- (4) Commercial Applicator.
 - (a) To obtain recertification, a commercial applicator must obtain every three years the required number of continuing education units in his certification category. In case of extenuating circumstances, such as a medical condition or military service, applicators may receive in the department's discretion an extension in which to accrue required continued education units.
 - (b) Continuing Education Units (CEU).
 - 1. The following number of CEUs are required for recertification in each respective certification category:
 - (i) Agricultural Pest Control (C01): 18 CEUs;
 - (ii) Forest Pest Control (C02): 12 CEUs;
 - (iii) Ornamental and Turf Pest Control (C03): 18 CEUs;
 - (iv) Seed Treatment (C04): 12 CEUs;
 - (v) Aquatic Pest Control (C05): 12 CEUs;

- (vi) Right-of-Way Pest Control (C06): 18 CEUs;
 - (vii) Industrial, Institutional, Structural and Health Related Pest Control (C07): 30 CEUs;
 - (viii) Public Health Pest Control (C08): 18 CEUs;
 - (ix) Limited Herbicide Applicator: requirements equivalent to certification under Ornamental and Turf Pest Control (C03), 18 CEUs;
 - (x) Demonstration, Research, and Regulatory Pest Control (C10): 18 CEUs;
 - (xi) Wood Preservatives (C11): 9 CEUs;
 - (xii) Pesticide Dealers (C12): 18 CEUs;
 - (xiii) Antifouling Marine Paint (C13): 9 CEUs;
 - (xiv) Microbial Pest Control (C14): 9 CEUs;
 - (xv) Reserved;
 - (xvi) Sewer Line Treatment (C16): 9 CEUs.
2. The number of CEUs required for recertification shall be prorated for persons obtaining original certification during a recertification period.
 3. An applicator shall accrue one CEU for each hour of attendance at CEU approved training on certification related topics.
 4. No more than 50% of the required number of CEUs may be accrued at in-house training.
 5. No more than 75% of the required number of CEUs may be accrued at any one external training.
 6. CEUs may be awarded for electronic media used in conjunction with a presentation as part of in-house training.
 7. Applications for approval of CEU training must be filed with the department at least 30 days prior to the date of the training. Applications submitted by educational institutions must be submitted to the University of Tennessee, Pesticide Safety Education Program (PSEP).
 8. All attendance rosters for CEU approved training must be submitted to the department no later than 30 days after the training. A violation of this requirement is grounds for denial of any future application for approval of CEU training by the sponsor or facilitator.
 9. Representatives of the department and PSEP employees may attend any CEU approved training without incurring registration fees.
- (c) An applicator who does not accrue the required number of CEUs prior to expiration of his certification may be subject to regulatory enforcement measures by the Department and must, in order to maintain valid certification, successfully retake the exam in his certification category.

Authority: T.C.A. §§ 4-3-203; 43-8-106; 62-21-118.

As state standards for pesticide recordkeeping requirements of private applicators using restricted use pesticides, the department adopts by reference, as if fully stated herein, those federal standards for recordkeeping on restricted use pesticides by certified applicators, compiled at 7 C.F.R. 110, as last amended and codified January 1, 2006.

Authority: T.C.A. §§ 4-3-203; 43-8-106; 62-21-118.

0080-09-02-.08 Use of Restricted Use Pesticides

- (1) No person shall use or buy a restricted use pesticide unless certified as a private applicator or a commercial applicator or unless licensed as a commercial pest control operator.
- (2) No person shall act as a private applicator unless he is certified by the department as a private applicator.
- (3) No person shall act as a commercial applicator unless he is certified by the department as a commercial applicator. A commercial applicator may only act within the certification category for which he is certified.
- (4) No person shall act as a commercial pest control operator unless he is licensed by the department as a commercial pest control operator. A commercial pest control operator may only act within the category for which he is licensed.
- (5) Pesticide dealers.
 - (a) No one shall sell restricted use pesticides at wholesale or retail unless he is certified in the category of Pesticide Dealers (C12) and has obtained a Restricted Use Pesticide Dealer license.
 - (b) A licensed pesticide dealer shall not sell or allow the sale of a restricted use pesticide to any person who is not certified or licensed by the department for the purchase of restricted use pesticides.
 - (c) Pesticide dealers shall submit with their applications for license renewal all yearly sales records of restricted use pesticides sold, including for each sale: the date of the sale, the name and quantity of the pesticide purchased, the name of the purchaser, the purchaser's certification or license number, and the expiration date of the purchaser's license, certificate, or private applicator card.

Authority: T.C.A. §§ 4-3-203; 43-8-106; 62-21-118.

0080-09-02-.09 Exemptions

Persons licensed pursuant to T.C.A. §43-8-301 et. seq. are exempt from the requirements of this chapter for aerial applications of pesticides.

Authority: T.C.A. §§ 4-3-203; 43-8-106; 62-21-118.

0080-09-02-.10 Violations

- (1) Violations of the Act or this chapter are actionable against any person when committed by either the person or his agent.
- (2) Each violation of the Act or this chapter is grounds for issuance of a stop sale, stop use, or removal order against the violator, in addition to or in lieu of any other lawful disciplinary action.

- (3) In addition to all other requirements of the Act and this chapter, each occurrence of the following shall constitute a separate violation of this chapter:
- (a) Label violations. Any violation of federal standards for labeling requirements for pesticides, compiled at 40 C.F.R. Part 156, which the department adopts by reference as if fully stated herein.
 - (b) Formulation violations.
 - 1. Chemical deficiencies;
 - 2. Net weight inaccuracies;
 - 3. Chemical contamination;
 - 4. Over-formulated.
 - (c) Use violations.
 - 1. Use or disposal of a pesticide in a manner inconsistent with its labeling;
 - 2. Violation of stop sale, use or removal order.
 - (d) Records, books, documentation violations.
 - 1. Failure to maintain as required by the Act;
 - 2. Failure to produce for inspection.
 - (e) Product registration violations. Failure to have products registered.

Authority: T.C.A. §§ 4-3-203; 43-8-106; 62-21-118.

0080-09-02-.11 Pesticide Management and Disposal

The department adopts by reference, as if fully stated herein, those federal standards for pesticide management and disposal and standards for pesticide containment structures, compiled at 40 C.F.R. 165, Subparts A and E, as either subpart may be amended from time to time.

Authority: T.C.A. §§ 4-3-203; 43-8-106; 62-21-118.

0080-09-02-.12 Pesticide Product Registration Fee

The fee for each pesticide product registration shall be a Tier 5 annual fee under T.C.A. §43-1-703(f).

Authority: T.C.A. §§ 4-3-203; 43-1-703; 43-8-104; 43-8-106; 62-21-118.

Chapter 0080-09-03
Commercial Aerial Application of Pesticides

0080-09-03-.01 General

- (1) Insurance required by T.C.A. §43-8-304 must cover any liability arising out of the commercial aerial applicator's application of pesticides.
- (2) Any pesticide applied by a commercial aerial applicator must be applied in a manner consistent with its label and label restrictions. Upon request of the department, a commercial aerial applicator must submit evidence that pesticide label restrictions have been fully met.
- (3) Applicants for licensure as a commercial aerial applicator must remit to the department payment of a Tier 5 annual license fee under T.C.A. §43-1-703(f) for each category license held by the applicant.
- (4) The fee for each aerial decal shall be a Tier 4 fee under T.C.A. §43-1-703(f).

Authority: T.C.A. §§ 4-3-203; 43-1-703; 43-8-302; 43-8-304.

0080-09-03-.02 Denial of License

In addition to or in lieu of any other lawful disciplinary action, violation of any statute or regulation regarding the use, purchase, or sale of pesticides shall be grounds for denial or revocation of any license issued under authority of T.C.A. §43-8-301, et seq.

Authority: T.C.A. §§ 4-3-203; 43-8-302.

Chapter 0080-09-04
Pest Control Operators

0080-09-04-.01 Qualifications of Applicants

- (1) Applicants are required to have a commercial applicator certificate in the certification category before taking a license examination in that category, as provided in Tenn. Comp. R. & Regs. 0080-09-02-.04.
- (2) Applicants must be at least 18 years of age and a U.S. citizen or possess a current U.S. government issued visa prior to taking the license examination.
- (3) Qualification for examination based on education.
 - (a) Applicants are qualified to take any license examination, except the Wood Destroying Organisms license examination, if they have been awarded a baccalaureate degree with a major or minor in one or more of the following curricula: agriculture, biology, chemistry, forestry, horticulture, entomology, plant pathology and plant science, or other similar course of study. Satisfaction of these qualifications must be demonstrated by evidence of an official transcript from the institution of higher education that awarded the applicant's degree.
 - (b) Applicants are qualified to take the Pest Control Consultant license examination if they have graduated from an accredited institution with a baccalaureate degree in the field of pest control in which the applicant intends to offer consultation. A Pest Control Consultant license does not qualify the licensee to conduct pest control operations.
- (4) Qualification for examination based on combination of education and experience.
 - (a) Applicants are qualified to take the Wood Destroying Organisms license examination if:

1. They have been awarded a baccalaureate degree as set forth in subparagraph (3)(a) of this rule and have completed one year of full-time work experience in the field of wood destroying organisms; or,
 2. They have been awarded a masters or doctoral graduate degree in entomology and have graduated from the Tennessee Apprentice Termite Technician School.
- (b) Applicants who hold a current Horticulture – Lawn, and Turf (HLT); Horticulture Interior (HRI); Weed Control Right-of-Way and Industrial (WEC); or Agricultural – Ground Equipment (AGE) license are qualified to take the license examination in another of those four categories, provided the applicant is certified in the license category for which he has applied; has at least two years work experience in the license category for which he has applied; or has at least 12 college level semester hours or 24 continuing education units related to the license category for which he has applied.
- (c) Applicants are qualified to take the Agricultural – Ground Equipment (AGE) or Horticulture – Lawn and Turf (HLT) license examination if they have: completed two years of full-time work experience in the license category for which they have applied; been awarded a baccalaureate degree; and completed at least 12 college level semester hours or 24 continuing education units related to the categories of AGE or HLT.
- (5) Qualification for examination based on experience.
- (a) Applicants are qualified to take the Horticulture – Lawn and Turf (HLT) or Agricultural – Ground Equipment (AGE) license examination if they:
1. Hold a valid Certified Crop Advisors (CCA) certificate;
 2. Have one year of full-time work experience applying pesticide in the category of license for which they have applied;
 3. Are certified in the category of license for which they have applied; or,
 4. Are registered with the department as a pest control technician or salesperson, as provided in Tenn. Code Ann. §62-21-109, for a period of 24 months of full-time work experience. If the applicant was not registered with the department through no fault of his own or if the applicant's work experience was obtained out of state, the applicant may satisfy this requirement through provision of documentary evidence of his employment.
- (b) Applicants are qualified to take the Public Health Mosquito Control license examination if they hold a valid Public Health Mosquito Control certificate or a General Pest and Rodent Control certificate.
- (6) Applicants who misrepresent their work experience shall be ineligible to take any license examination for two years after the applicant meets the required qualifications.
- (7) If after an applicant is issued a license the department determines that the applicant's application contained inaccurate information, the license shall be revoked in accordance with the Uniform Administrative Procedures Act, and the applicant shall be prohibited from resubmitting an application for any license examination for two years.

Authority: T.C.A. §§ 4-3-203; 62-21-118.

0080-09-04-.02 Certification of Qualifications

- (1) Upon application to take a license examination, or at such other time as the Pest Control Board may require, the applicant shall present a certified statement or letter from persons or firms in whose employment the applicant received any qualifying experience.
- (2) Upon application to take a license examination, or at such other time as the Pest Control Board may require, the applicant shall present a copy of a transcript or certificate properly evidencing a qualifying degree, professional standing, course hours, or continuing education units.

Authority: T.C.A. §§ 4-3-203; 62-21-118.

0080-09-04-.03 Examination of License Applicants

- (1) Applications to take a license examination shall be submitted by the tenth day of the month preceding the month of the scheduled examination.
- (2) License examinations will be given the first month of each quarter at Ellington Agricultural Center in Nashville, Tennessee or at a place and date determined by the Pest Control Board.
- (3) Qualified applicants who have submitted an application will be notified of the date, place, and time of the examination(s). Applicants who are determined by the department to be unqualified will be notified in writing that their application was denied and the department's reason(s) for the denial.
- (4) License examinations shall be given in two parts, as follows:
 - (a) The first part of the examination will test applicants in the following areas of competency as they apply to the specific categories of licensure: state and federal laws and regulations; insects; weeds and disease; plant management decision making; herbicide technology; pesticide safety; adjuvants; fumigation and soil fumigation; integrated pest management; environmental considerations; principles of vegetation management; plant growth regulators; calibration of application equipment; common problems encountered during application; professionalism and public relations in vegetation management; pest, bird, plant, tree, and disease identifications; pesticides and human health; drift management; navigation (aerial, using GPS, DGPS, OmniSTAR); calculating area of target site; pesticide measurement systems; operations (aerial, pilot and ground crews and aircraft crash response); mosquitoes and human diseases; life cycle of mosquitoes; wood destroying organisms; vertebrates and invertebrates; pests on or near food; urban IPM programs; and implementing urban pest management programs.
 - (b) The second part of the examination will test applicants on specimen identification as it relates to the particular license category.
- (5) To pass the license examination, applicants must score 70% or higher on both parts, individually.
- (6) Applicants will be allowed two hours to complete the first part of the examination and three hours to complete the second part.
- (7) While there is no limitation on the number of categories for which a license applicant may be examined during any examination period; the above-stated time limits shall apply.
- (8) Applicants approved to take the license examination(s) are required to present a photo ID on the day of testing.
- (9) Applicants must pass the first part of the examination before they can take the second part. Applicants that fail the second part shall only be required to retake that part of the examination.
- (10) Applicants exhibiting unethical behavior during an examination shall be ineligible to take another license

examination for two years.

- (11) Applicants who cannot take a scheduled examination due to circumstances beyond their control must contact the department more than 48 hours prior to the scheduled examination to reschedule the exam or their examination fee will be forfeited.

Authority: T.C.A. §§ 4-3-203; 62-21-118.

0080-09-04-.04 License Categories

- (1) Agricultural – Ground Equipment (AGE). This category includes the control of agricultural pests by means other than fumigation. Applicants for this license must be certified in Agricultural Plant Pest Control.
- (2) Aquatic Pest Control (APC). This category includes the control of aquatic plants and algae through the application of pesticides. Applicants for this license must be certified in Aquatic Pest Control.
- (3) Bird Control (BDC). This category includes the control of bird pests through the use of pesticides. Applicants for this license must be certified in Industrial, Institutional, Structural and Health-Related Pest Control.
- (4) Forest Pest Control (FPC). This category includes the control of tree pests and diseases in institutional and non-agricultural locations. Applicants for this license must be certified in Forest Pest Control.
- (5) Fumigation – Soil (FUS). This category includes the control of agricultural pests through the soil application of a gas. This category includes pesticides that are in a solid or liquid state when handled or applied but which turn to gas upon being dispensed. Applicants for this license must be certified in Agricultural Plant Pest Control.
- (6) Fumigation – Structural (FUM). This category includes the control of pests by application of a gas. This category includes pesticides that are in a solid or liquid state when handled or applied but which turn to gas upon being dispensed. Applicants for this license must be certified in Industrial, Institutional, Structural, and Health-Related Pest Control.
- (7) General Pest and Rodent Control (GRC). This category includes the control of vertebrate and invertebrate pests, including fire ants, that are generally known to invade a structure, and that are not specifically included under other categories of licenses in this rule. Applicants for this license must be certified in Industrial, Institutional, Structural, and Health-Related Pest Control.
- (8) Horticultural – Interior (HRI). This category includes the control of plants pests and diseases. The category applies to residential and commercial locations, but does not include greenhouses. Applicants for this license must be certified in Ornamental and Turf Pest Control.
- (9) Horticulture – Lawn and Turf (HLT). This category includes the control of pests and diseases generally known to invade turf, lawns, and landscape in non-agricultural locations such as residential and commercial lawns and landscapes, parks and athletic fields. This category includes fire ants, fleas, and ticks, and other pests not specifically included under other categories of licenses in this rule, but not other pests generally known to invade the inside of a structure. Applicants for this license must be certified in Ornamental and Turf Pest Control.
- (10) Microbial Pest Control – (MPC). This category includes the control of microorganisms, e.g. bacteria, fungi, algae, and viruses, in industrial cooling towers, air washers, evaporative condensers, pulp and paper mills, sewer treatment facilities, cutting tool lubricants, potable water systems, and other similar structures or facilities. Applicants for this license must be certified in Microbial Pest Control.
- (11) Mold Remediation – (MRC) – This category includes the control of mold and fungus in structures due to water damage. Applicants for this license must be certified in Industrial, Institutional, Structural and

Health Related Pest Control or Microbial Pest Control.

- (12) Pest Control Consultant (PCC). This category of license is available to a graduate of an accredited college or university with a baccalaureate degree in the field of pest control in which consultation is offered. A license in this category does not qualify the holder to conduct pest control operations.
- (13) Public Health Mosquito Control (PHMC). This category includes management of mosquitoes in all stages of their development on public land and public waters. Applicants for this license must be certified in Public Health Pest Control.
- (14) Weed Control – Right-of-Way Industrial (WEC). This category includes the control of plants, whether wood or herbaceous, by the application of chemicals generally classified as herbicides to industrial sites and rights-of-way such as, but not limited to, highways, transmission lines, drainage ditches, etc. Applicants for this license must be certified in Right-of-Way Pest Control.
- (15) Wood Destroying Organisms (WDO). This category includes the control of termites, wood borers, carpenter bees, carpenter ants, and decay, without regard to the type or use of the structure involved. Applicants for this license must be certified in Industrial, Institutional, Structural, and Health-Related Pest Control.
- (16) Wood Preservatives (WPC). This category includes the control of insects, fungi, marine borers, and the effects of weather on wood products that may damage or degrade the wood, whether controlled at the manufacturing or distributing stage. Applicants for this license must be certified in Wood Preservation Pest Control.
- (17) Special (SPC). This category includes the control of pests in special situations by methods not included in other license categories listed in this rule. This license category may or may not require an examination in the discretion of the Pest Control Board and licenses issued under this category may be limited to specific pesticide uses and circumstances as determined by the Pest Control Board.

Authority: T.C.A. §§ 4-3-203; 62-21-118.

0080-09-04-.05 License Requirement for Active Practice and Certification

- (1) Applicants who have passed a license examination must pay all licensure fees within one year of the license examination in order to obtain the license. The fee for each category of licenses is established at Tenn. Comp. R. & Regs. 0080-09-02-.04. Applicants who do not pay all licensure fees within one year of the license examination will be required to retake the license examination prior to receiving a license. Applicants with extenuating circumstances, such as a medical condition or military service, may receive in the department's discretion an extension in which to pay the license fee.
- (2) Individuals under expired licenses or certifications must retake the license and certification examinations before they will be eligible to renew the license(s) or certification(s).
- (3) All licenses issued under this chapter shall expire upon expiration of the license holder's certification. Licenses may be reinstated where the license holder recertifies for the certification, provided that the certification has not been expired for more than one year.

Authority: T.C.A. §§ 4-3-203; 62-21-118.

0080-09-04-.06 Requirements for Licensees in Fumigation

- (1) When a gas that is poisonous to humans is being used in a fumigation application, a certified applicator licensed in the category of fumigation, FUS or FUM, must be present at the application site and actively in charge of work.
- (2) When a gas that is poisonous to humans is being used in a fumigation application, a certified applicator licensed in the category of fumigation, FUS or FUM, must ensure that:
 - (a) At least one gas mask, capable of protecting its wearer from the gas being applied, is readily available at the application site for each person present during the application.
 - (b) Warning signs are conspicuous and prominently displayed at all entrances to the building, structure, or other area at the fumigation site, declaring that the property is being fumigated with poisonous gas and that no one should enter.
 - (c) A guard is present at any publicly available entrance to the site to prevent entry by unauthorized persons and that all entry doors where a guard is not posted are locked, posted with a warning sign, and regularly patrolled by a guard. Any guard shall at all times have ready access to a gas mask, capable of protecting its wearer from the gas being applied.
 - (d) The building, structure, or area at the fumigation site is properly cleared of fumigants in accordance with the pesticide label before unrestricted re-entry of the site is authorized.

Authority: T.C.A. §§ 4-3-203; 62-21-118.

0080-09-04-.07 Requirements for Licensees in Wood Destroying Organisms

- (1) Persons operating under licenses for wood destroying organisms shall conform to the following regulations:
 - (a) On every control job for wood destroying organisms, a written contract shall be fully defined and executed in duplicate by all parties prior to any pesticide being applied in performance of the contract. On control jobs for termites, the contract shall contain a warranty for the service provided. The contract and any applicable warranty shall be transferable so as to remain with the treated property for the remainder of the contract term, which may be renewed or extended upon written agreement of the parties. One copy of the contract shall be retained by the commercial pest control operator and one copy of the contract shall be provided to the non-operator party contracting for the service. The contract shall be uniquely numbered in a manner necessary to distinguish it from other contract numbers issued by the pest control operator and different from any purchase order number, contact number, or other information related to the operator's provision of pesticide services.
 - (b) For each contract described in subparagraph (1)(a), a graph shall be attached to the contract prior to the contract being fully executed. The graph shall be drawn to show the condition of the property as it relates to termite infestation and damage at the time of the contract being executed by the commercial pest control operator.
- (2) Unless exempted by paragraph (6) of this rule or unless prohibited by the pesticide label, the operator shall give the following minimum services on each control job for wood destroying organisms:
 - (a) All applications of pesticides for the purpose of controlling wood destroying organisms shall be done in accordance with label directions. Allowances under 7 U.S.C.A. §136(ee) shall not apply when mixing or applying termiticides.
 - (b) All pretreatments shall be completed according to label directions within one year of the date of the initial treatment or to coincide with the completion of the backfill.

- (3) Each property under contract with a termite control operator shall be examined by the operator at least once per year, provided that the owner or agent of the property makes the property available for examination. A report of the annual examination and all subsequent inspections showing the condition of the property with respect to the presence or absence of wood destroying organisms shall be left with the property owner at the time of the examination or inspection and a copy of the report retained by the operator, subject to inspection by the Department.
- (4) The department may examine records and properties treated by any operator licensed in the category of wood destroying organisms for the purpose of determining the efficacy of the treatment given. Whenever unsatisfactory or substandard treatments are found, the operator or charter holder will be notified and will be given a reasonable length of time in which to correct the condition. If the operator fails to correct the condition within that time, his license and the corresponding charter may be suspended as provided by law unless the operator can show good cause why suspension should not be taken. During suspension of any license or charter under this paragraph, the operator and charter holder may retreat all properties on which they hold current contracts for pesticide services, provided that they notify the department of all dates of reexaminations and retreatments provided to properties previously deemed unsatisfactory by the department. However, in no event shall the operator or charter holder solicit new business during suspension of their license or charter. When all properties previously noticed to the operator as unsatisfactory have been re-examined and retreated, the department shall make re-inspection of the properties within a reasonable period. The department may lift the suspension of any license or charter under this paragraph if the department finds upon re-inspection that the condition of the properties has been corrected. If the department finds upon re-inspection that the condition of the properties has not been corrected, the license or charter suspended under this paragraph may be revoked. Any license or charter may be suspended or revoked for gross neglect of contracts, falsifying the presence of an insect pest, or general failure to give satisfactory service.
- (5) All contracts for termite control shall carry a one year warranty for retreatments of termites only. The issuance of a damage guarantee is optional.
- (6) Less than complete treatments may be given when physical reasons or conditions prevent a full treatment; when the label prohibits; or when the owner of the property requests that a less than complete treatment be provided.
- (7) Warranties and guarantees are not required for less than complete treatment of non-commercial buildings. However, the contract covering such work shall contain express and unambiguous language that no guarantee is provided for the treatment. Additionally, "No Guarantee" shall be printed in letters at least one-half inch in height on both sides of the invoice and agreement form regarding the less than complete treatment.
- (8) Wood Destroying Beetles.
 - (a) When it is determined that an active infestation of wood destroying beetles exists, treatment may be permitted for the control or prevention of re-infestation of the families of beetles that are known to reinfest seasoned wood, e.g. Anobiidae, Lyctidae, Bostrichidae, Cerambycidae, and Curculionidae.
 - (b) Treatment procedures.
 1. Active infestations may be treated only with a federal and state registered pesticide that is labeled for the remedial treatment of wood destroying beetles. All applications and safety procedures must be strictly followed according to label instructions. Persons who provide treatments for active wood destroying beetle infestations must have a valid Wood Destroying Organism or Fumigation license appropriate for the registered pesticides that are applied. Persons who provide treatments for active wood destroying beetle infestations must, prior to providing the treatment, inform property owners of alternative means of control such as removal and replacement of infested wood where the infestation is localized.

2. Preventative treatments may be performed only with a federal and state registered pesticide that is labeled for application as a preventative treatment of wood destroying beetles.
- (i) New construction. Preventative treatments of new framing or new log construction shall be performed with a federal and state registered pesticide that is labeled for the prevention of wood destroying beetles.
 - (ii) Existing structures. Preventative treatments of existing frame structures may be performed if:
 - (I) Prior to treatment, wood moisture content in the intended treatment area is tested using a moisture inspection instrument designed to read moisture content in wood;
 - (II) At least five locations where the wood moisture content is tested show moisture content of at least 18%;
 - (III) The commercial pest control operator provides a written report to the property owner listing and diagramming the conditions that warrant a preventative treatment; and,
 - (IV) The treatment is performed with a federal and state registered pesticide that is labeled for the preventative treatment of wood in existing frame structures.
 - (iii) Existing log structures. Preventative treatments of existing log structures shall be performed with a federal and state registered pesticide that is labeled for the preventative treatment of wood in log construction.

(9) Carpenter Ants and Bees.

- (a) Carpenter Ants (*Camponotus*, Sp.) damage can be recognized by the presence of hollow, irregular, clean chambers cut across the grain, and by the presence of fine to coarse wood fibers, which are removed from the chamber by the ant as the nest is constructed. Treatment of carpenter ants may be localized treatments by an approved pesticide. The nest should be found and treated if possible. Carpenter ants are generally present due to excess moisture somewhere in the wooden structures. To help control a carpenter ant infestation, the moisture problem should also be corrected.
- (b) Carpenter Bees (*Xylocopa* spp.) often burrow into exposed, dry wood of buildings, posts, wooden fences, etc. Damage to the wood can be extensive because the bees often colonize the same piece of wood. Treatment of carpenter bees may be performed by applying any approved pesticide into the entrance holes.

- (10) Formosan Termites. All infestations of *Coptotermes*, *Formosanus*, *Shiaki*, or any other members of the genus *Coptotermes*, known as the Formosan termite, shall be treated with appropriately labeled pesticides and reported to the department.

Authority: T.C.A. §§ 4-3-203; 62-21-118.

0080-09-04-.08 Certification of Commercial Pesticide Applicators

- (1) No charter holder or licensed pest control operator shall allow an uncertified person to apply pesticides except in accordance with this rule.
- (2) Custom applications of pesticide must be applied by a pest control operator or certified applicator, licensed or certified in the category of services being provided, or by a person in the presence of a properly licensed pest control operator or certified applicator.
- (3) Commercial applicators who apply pesticides under the direct supervision of a licensed pest control operator must be certified in the category of services being provided.
- (4) Commercial applicators will be issued an individual commercial certification card and are responsible for maintaining their certification as provided in Tenn. Comp. R. & Regs. 0080-09-02.

Authority: T.C.A. §§ 4-3-203; 62-21-118.

0080-09-04-.09 Recordkeeping Requirements for Commercial Pest Control Operators and Commercial Applicators

- (1) All commercial pest control operators and commercial applicators shall maintain true and accurate records of both restricted and general use pesticides. Such records shall be kept legibly or electronically and shall be readily available for departmental inspection for two years following the pesticides' use. Upon request by the department, such records shall be made available within 48 hours.
- (2) The records must document each of the following:
 - (a) Applicator's first and last name(s) and departmental assigned identification number;
 - (b) Pesticide used;
 - (c) Target pest(s);
 - (d) Crop, plant, house, business, or building onto or around which the pesticide is applied;
 - (e) Location where the pesticide is applied, including physical address or Farm Services number;
 - (f) Application rate;
 - (g) Percentage of mixed-use dilution and quantity of pesticide used;
 - (h) Landowner or other person who requested the custom application of pesticide; and,
 - (i) Date of service.

Authority: T.C.A. §§ 4-3-203; 62-21-118.

0080-09-04-.10 Requirements for Licensees in Aquatic Weed Control

Any person applying herbicides in state waters for the control of aquatic weeds must be under the direct supervision of pest control operator licensed and certified in Aquatic Pest Control.

Authority: T.C.A. §§ 4-3-203; 62-21-118.

0080-09-04-.11 Requirements for Spot Treatment Only in Lawn Maintenance

- (1) Any person who incidentally applies herbicide with the sole active ingredient Glyphosate for the control of weeds in conjunction with commercial lawn and landscape maintenance practices, e.g. spot treatments adjacent to fencing, driveways, parking lots, cemetery markers, and landscape borders and areas in lieu of or in conjunction with hand-weeding or mechanical weed trimming and edging, shall not be considered to be applying a custom application of pesticide, provided that the person meets the following criteria:
 - (a) The applicator has obtained and maintained certification in the category of Limited Herbicide Applicator;
 - (b) The application equipment is limited to a single, hand-held nozzle supplied by a tank with a maximum capacity of 25 gallons; an electric or hand-powered pump with a maximum discharge rate of 1.5 gallons per minute; and a discharge hose no longer than 15 feet long;
 - (c) The applicator or his employer has provided to the department proof of liability insurance with coverage for bodily injury and property damage of at least \$300,000 per occurrence and \$300,000 aggregate, including coverage for products and completed operations, and the policy has been endorsed to cover herbicide applications;
 - (d) The name of the business and certificate number is displayed on the right and left sides of all company vehicles or trailers, in lettering no shorter than two inches tall; and,
 - (e) Application records shall contain the date of application and the property address.
- (2) A person operating under this rule shall not advertise the application of herbicides or any other pesticide application. A person operating under this rule shall not supervise the application of any pesticide by an uncertified person.
- (3) Persons certified in the category of Limited Herbicide Applicator are not required to obtain a business charter, bond, or license.
- (4) This rule shall not apply to any person who applies a herbicide with the sole active ingredient Glyphosate for the control of weeds in conjunction with lawn maintenance practices as spot treatments in lieu of, or in conjunction with, mechanical weed trimming or edging at a homeowner's or renter's residence when such product is stored, provided, and mixed by the homeowner or renter requesting such service. The homeowner or renter is responsible for instructing the applicator as to how and where to apply the product.

Authority: T.C.A. §§ 4-3-203; 62-21-118.

0080-09-04-.12 Fees

- (1) The fee for a special local need (24-C) shall be a Tier 6 fee under T.C.A. §43-1-703(f).
- (2) The fee for a commercial pest control operator charter shall be a Tier 9 biennial fee under T.C.A. §43-1-703(f).
- (3) The fee for registration of nonclerical employees and issuance of solicitor and technician cards shall be a Tier 2 biennial fee under T.C.A. §43-1-703(f) for each employee, solicitor, or technician registered with the department.
- (4) The fee for each consultant or custom applicator license examination shall be a Tier 4 fee under T.C.A. §43-1-703(f).
- (5) The fee for a pest control consultant license shall be a Tier 10 biennial fee under T.C.A. §43-1-703(f).

Authority: T.C.A. §§ 4-3-203; 43-1-703; 43-8-113; 62-21-111; 62-21-112; 62-21-118.

Chapter 0080-09-05 Worker Protection

0080-09-05-.01 Definitions

Farm labor contractor means any person who does not own and is not responsible for the management or condition of an agricultural establishment; and who hires or contracts workers to perform activities related to the production of agricultural plants, in exchange for compensation of any kind.

Authority: T.C.A. §§ 4-3-203; 43-8-106; 62-21-118.

0080-09-05-.02 Worker Protection Standards (WPS)

The department adopts by reference, as if fully stated herein, the federal standards for labeling requirements for pesticides and devices and worker protection standards, compiled at 40 C.F.R. Part 156, Subpart K, and Part 170.

Authority: T.C.A. §§ 4-3-203; 43-8-106; 62-21-118.

0080-09-06-.03 WPS Trainer Requirements

- (1) Persons currently certified as a private applicator of restricted use pesticides or as a commercial applicator in categories C01, C03, or C10 are exempt from the pesticide safety trainer requirements and may provide WPS training required in 40 C.F.R. §170.130(d)(1) and §170.230(c)(1).
- (2) A trainer shall submit a signed roster to the Department verifying that workers and handlers have been trained according to the requirements of 40 C.F.R. §170.130(d)(1) and §170.230(c)(1). The roster shall include the following:
 - (a) The name, address, telephone number, and signature of the applicant; and,
 - (b) The date of the training.
- (3) The commissioner or designee shall be permitted to inspect places where WPS training is being held and to question trainers and attendees to determine compliance with the requirements of this rule.
- (4) Any of the following may be grounds for suspension, revocation, or denial of WPS Trainer privileges:
 - (a) Failure to follow worker or handler training requirements detailed under 40 C.F.R. §§ 170.130(d)(1), (4); 170.230(c)(1), (4);
 - (b) Failure to maintain training information or to fulfill verification requirements detailed under paragraph (2) of this rule;
 - (c) Acting as a trainer without authorization; or,
 - (d) Revocation, suspension, or denial of trainer authorization in any jurisdiction within the previous three years.

Authority: T.C.A. §§ 4-3-203; 43-8-106; 62-21-118.

0080-09-05-.04 Notice to Farm Labor Contractors

- (1) The owner or operator of an agricultural establishment shall provide the farm labor contractor who performs work on that agricultural establishment with:
 - (a) The location of the agricultural establishment's central posting site; and,
 - (b) Any restrictions on entering a treated area, as specified under 40 C.F.R. §170.120(d), if a treated area is within 1/4 mile of a location where workers work and the treated area is not posted as required under 40 C.F.R. §170.120(a)-(c).
- (2) The farm labor contractor shall:
 - (a) Post or provide workers in writing with the information required under 40 C.F.R. §170.122 or the specific location of the central posting site for each agricultural establishment on which the worker will be working; and,
 - (b) Provide workers with restrictions on entering a treated area, as specified in 40 C.F.R. §170.120(d), if the treated area is within 1/4 mile of a location where the worker will be working and the treated area is not posted as allowed or required under 40 C.F.R. §170.120(a)-(c).

Authority: T.C.A. §§ 4-3-203; 43-8-106; 62-21-118.

Repeal

Chapter 0080-06-14
Pest Control Operators

Chapter 0080-06-14 Pest Control Operators is repealed in its entirety.

Authority: T.C.A. §§ 4-3-203; 62-21-118.

Chapter 0080-06-15
Rules and Regulations Governing Commercial Aerial Application of Pesticides

Chapter 0080-06-15 Rules and Regulations Governing Commercial Aerial Application of Pesticides is repealed in its entirety.

Authority: T.C.A. §§ 4-3-203; 43-8-106; 62-21-118.

Chapter 0080-06-16
Regulations Governing Use of Restricted Use Pesticides

Chapter 0080-06-16 Regulations Governing Use of Restricted Use Pesticides is repealed in its entirety.

Authority: T.C.A. §§ 4-3-203; 43-8-106; 62-21-118.

Chapter 0080-06-27
Worker Protection

Chapter 0080-06-27 Worker Protection is repealed in its entirety.

Authority: T.C.A. §§ 4-3-203; 43-8-106; 62-21-118.

* If a roll-call vote was necessary, the vote by the Agency on these rulemaking hearing rules was as follows:

Board Member	Aye	No	Abstain	Absent	Signature (if required)

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Department of Agriculture (board/commission/ other authority) on 03/23/2016 (mm/dd/yyyy), and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 01/27/16

Rulemaking Hearing(s) Conducted on: (add more dates). 03/21/16

Date: 03/23/2016

Signature: Jai Templeton

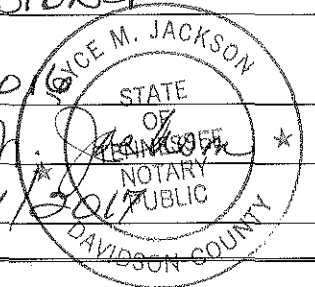
Name of Officer: Jai Templeton

Title of Officer: Deputy Commissioner

Subscribed and sworn to before me on: 03/23/2016

Notary Public Signature: [Signature]

My commission expires on: 09/01/2017



All rulemaking hearing rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.

Herbert H. Slatery III
Herbert H. Slatery III
Attorney General and Reporter

4/1/2016
Date

Department of State Use Only

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PUBLICATIONS

Filed with the Department of State on: 4/1/16

Effective on: 6/30/16

Tre Hargett
Tre Hargett
Secretary of State

G.O.C. STAFF RULE ABSTRACT

AGENCY: Underground Storage Tanks and Solid Waste Disposal Control Board

SUBJECT: Solid Waste Processing and Disposal

STATUTORY AUTHORITY: Tennessee Code Annotated, Section 68-211-111

EFFECTIVE DATES: July 7, 2016 through June 30, 2017

FISCAL IMPACT: According to the Board, the Tennessee Department of Environment and Conservation will collect \$1,000 in application processing fees for each new permit. The permits will also net an additional \$3,000 in annual maintenance fees for each facility; however many facilities are expected to qualify for an annual maintenance fee exemption if they beneficially use 75% of their feedstock and request the exemption. The Department expects only 1 to 3 new permit applications per year. The Department expects a mix of government and private sector applicants. The Department expects any local government sponsored permitted facility to experience some cost saving from their normally incurred disposal expenses by diverting material towards composting operations and possibly generate some revenue from the sale of finished compost.

STAFF RULE ABSTRACT: According to the Board, the rulemaking hearing rule primarily revises Rule 0400-11-01-.11 Requirements for Compost and Composting Facilities. The rule revision is based on the Model Compost Rule Template as set forth by the U.S. Composting Council, 5400 Grosvenor Lane, Bethesda, MD 20814. The template is a compilation of composting information submitted by industry and regulatory leaders across the nation who participated in the development of the model rule template. The revision is based on a three-tier facility classification with specific feedstocks that are used at the different tier levels. This revision

provides better composting practices and composting opportunities for our State on a local level. Revisions to Rules 0400-11-01-.01 and 0400-11-01-.02 are being made to support the changes in Rule 0400-11-01-.11.

Public Hearing Comments

One copy of a document containing responses to comments made at the public hearing must accompany the filing pursuant to T.C.A. § 4-5-222. Agencies shall include only their responses to public hearing comments, which can be summarized. No letters of inquiry from parties questioning the rule will be accepted. When no comments are received at the public hearing, the agency need only draft a memorandum stating such and include it with the Rulemaking Hearing Rule filing. Minutes of the meeting will not be accepted. Transcripts are not acceptable.

1. Comment: The analysis and testing should be expanded to include such common constituents of mixed solid wastes and biosolids as antibiotics, hormone mimicking compounds, pesticides, and hydrocarbons. Such materials occur not infrequently in the afore-mentioned waste categories and would not be suitable for land application to home environments.

Response: The Department does not agree. Testing for antibiotics, hormone mimicking compounds, pesticides, hydrocarbons and several other constituents are not referenced in the US Composting Council's Model Compost Rule Template from which much of this rule revision was derived. However, the Department of Environment and Conservation (Department) has examined these issues and concluded that antibiotics degradation is sped up through the composting process while uptake of these compounds from food crops is limited. Similar conclusions were found for hormone mimicking compounds and pesticides. Some herbicides are persistent through the composting process but are not readily found in municipal solid waste and biosolids. Composting also neutralizes many of the hydrocarbons in contaminated feedstocks as the microorganisms are able to use limited amounts of the carbon as an energy source.

2. Comment: We find the proposed rule changes to conflict with both the Water Quality Control Act and the Tennessee's Right-To-Farm Act in T.C.A. §§ 43-26-101 et seq. and ask that the proposed amendments reflect those allowances as already established for agriculture in these statutes. Noise, dust, and odors from a compost operation on a farm cannot be separated from the rest of the farm operation. All farm operations have noise, dust, and odors. This language is ambiguous regarding farm operations and provides very little guidance for farmers or department staff regulating solid waste. We would ask the department to leave the current language in the rules which reflects that normal farming operations are not included in a solid waste regulation that is clearly designed for a different purpose.

Response: The Department agrees and has concluded that Rule 0400-11-01-.11(1)(b)3(ii)(III): "The composting facility is operated in such a manner that noise, dust, and odors do not constitute a nuisance or health hazard and does not cause or contribute to surface or ground water pollution" should be deleted to further clarify the Department's intent to exempt agricultural operations.

3. Comment: We are concerned about the language and potential interpretations regarding dust and odors which could constitute a nuisance. Specifically the threshold levels have been or will be outlined and given as guidance to TDEC employees who are called to do a site visit due to a complaint? When would an operation be determined to be categorized as operating or managing composting materials in such a way that it be considered a nuisance? What acceptable level of dust and or odors would constitute a nuisance?

Response: Dust control is universally addressed for all permitted composting operations in Rule 0400-11-01-.11(2)(a)2(iv). A description of odor control measures is required within the Narrative Description of the Facility and Operation during the permitting process, Rule 0400-11-01-.11(5)(c). If an odor or dust issue is reported to the Tennessee Department of Environment and Conservation (TDEC) through a complaint, the Department will conduct an inspection of the facility to determine if the complaint is valid. If the inspector determines the complaint has merit, the inspector will examine the facility to make sure it is operating within its permitted conditions and will also determine the reason for the odor or dust problem. Often odor problems will arise with improper composting operations that produce anaerobic rows or piles of wet materials that have insufficient bulking material. It is generally cost prohibitive to require composting facilities to track odors with scientific instruments, while the accuracy is complicated by changing wind direction and intensity. Dust management is not typically an issue associated with composting facilities except from those associated with wood grinding operations and from dry roads.

4. Comment: Rule 0400-11-01-.11(2)(a)1(x) Buffer Zone Standards for Siting New Facilities - All waste management areas shall be located so as to conform to the distance standards at subparagraph (3)(a) of Rule 0400-11-01-.04. The buffer standards for compost facilities are the same for Class I, II, III, and IV landfills, but compost facilities do not present the same degree of risk to human health and the environment as do solid waste landfills. Could buffer distances specific to compost facilities be considered? Could the waste management areas of compost facilities be more specifically defined as including such areas as raw feedstock receiving areas and the windrow area but not include stockpiles of mulch? There should be a tiered approach to set back requirements in alignment with the Tier 1, 2 and 3 type feedstocks. A tier 3 facility may require the current setback requirements, where as a Tier 2 and Tier 1 facility would be correspondingly less stringent.

Response: Rule 0400-11-01-.04 states that the buffers zones be measured from the fill area, where fill area is defined as the "area containing waste..." In a composting operation this area would be measured from the footprint of the composting rows or piles and feedstock staging areas. The buffer would not be measured from the location of the curing piles or the location of the finished compost product. The Department feels the buffer conditions are appropriate.

5. Comment: Current financial assurance requirements are based on landfill regulations. Requirements for financial assurance and facility closure in this scenario could be improved to be more commensurate with a compost facility operation versus a solid waste landfill. We propose that the type of facility operations dictates the time frame for continuous operation following default or departure of the facility operator. For example an open windrow system would require 4 months of operational capital to process raw materials into a stable product that can be land applied. This would eliminate the need to landfill a valuable material. The material could also be sold, used by the state on state property or given away to the public. This is a more cost effective and more environmentally friendly method than hauling material in various stages of processing to a landfill.

Response: Financial assurance for each permit will be calculated based on closure plans and cost estimates provided by the applicant. The Department cannot depend on locating and funding an operations team to work compost for four months in the event of a permit default. In the event of a permit default, the Department would look for the lowest cost solution most in line with the Department's goals of sound environmental stewardship. However, the financial assurance amount must take into consideration the worst case scenario where the material would need to be hauled offsite and properly disposed of.

6. Comment: A time line should be given in the curing process.

Response: The time it takes for compost to cure can be highly variable based on issues such as quantity, feedstock, location, and climatological factors, among others. The Department feels that mandating a timeline for the curing process is too prescriptive to encompass all types of composting operations and conditions.

7. Comment: The definition of windrow should be changed from piles to rows.

Response: The Department agrees and has changed the definition to include rows instead of piles.

8. Comment: Local fire departments should be trained on how to extinguish a fire at such facilities. Distance from the closest fire station to such a facility should be documented.

Response: The rule package carries over language from the existing rules stating that the facility shall acquire local firefighting services if available; this can be found in subpart (2)(a)2(ii) of Rule 0400-11-01-.11, "Fire Safety". This includes ensuring that the local firefighting services are aware of the nature of the ongoing operations at the permitted facility. Adding training requirements for fire departments is outside of TDEC's jurisdiction.

9. Comment: Certification should have expiration. One should have to keep up his or her earned credits.

Response: At this time, we feel the number of composting certification opportunities are limited enough that a strict certification program is not feasible for all operations. Therefore, Rule 0400-11-01-.11(2)(a)2(vi) only requires operators to go through a training program.

10. Comment: Nothing states that managers are required to show documentation of non-finished compost. Compost facility managers should have to keep records of their temps to prove PFRP has been completed.

Response: The Department agrees and has added this requirement to subparagraph (4)(e) of Rule 0400-11-01-.11, "Temperatures measurements throughout the composting process demonstrating that PFRP has been met is applicable."

11. Comment: In regard to tier three operations the rules should distinguish between Class A biosolid and proper application verses Class B biosolid and proper application.

Response: As long as the finished product contains pathogen and metal concentration levels that are below the listed maximums then the classification of the initial material has negligible bearing. Generally Class A biosolids are a designation for dewatered and treated sewage sludge that meets U.S. EPA guidelines for land application with no restrictions, so these are rarely composted. The Department consciously placed any operation processing biosolids into the Tier Three category with stricter requirements due to the diverse nature of the feedstock.

12. Comment: In regard to tier three operations and sewage sludge; what percentage of this feedstock is acceptable for the composting purposes? To what application will this product be used for?

Response: Feedstock ratios are individually determined by each permitted facility. The Department is concerned with the composition of the finished product, which must be below the listed maximums for metals and pathogens found in the testing requirements under Rule 0400-11-01-.11(3). If the finished product comes in under the maximum concentrations, then there are no restrictions for the initial feedstock percentages. Regarding application of the product, if the finished compost produced from sludge feedstock components is stable and fully matured; meaning that microbial activity and decay are complete, and if the metal and pathogen levels are in compliance with Rule 0400-11-01-.11(3), then there is no specific restriction on compost use/application provided it does not violate any other environmental laws or regulations.

13. Comment: We are very concerned that encouraging composting of non-organic waste including televisions, radios, and e-waste will compromise the quality and reputation of compost from the State of Tennessee. This has already happened in Sevierville which is a massive composting facility which is basically a composting landfill. The presence of glass severely compromises the quality and marketability of the compost.

Response: The Sevierville operation is a Tier III composting facility, but the vast majority of compost operations will not qualify for Tier III status. Operations that both qualify and choose to compost waste streams that have the potential for contamination from either e-scrap or glass must specifically outline, in their permit conditions, how they will manage that waste so that it does not end up in the finished product or contaminating the finished product.

14. Comment: We support exclusive use of decomposing organic material in compost produced in our state. Industrial by-products and "Mixed solid waste" should be avoided. Under current policy, there is very little "source separated organics" in Tennessee.

Response: The Department agrees that the best composting operations will use only organic feedstocks with nutrient ratios that will produce usable products without contaminants and pathogens. Composting waste streams, such as mixed solid waste, that contain organics can offer an environmentally sensible approach to reducing materials that contribute to landfill leachate generation.

15. Comment: Biosolids are allowed in Tier 3. We question use of chemically laden human waste.

Response: While Class A biosolids require no further treatment before land application, composting is a

viable method to reduce pathogens in Class B biosolids. According to the EPA, the use of biosolids in the production of crops for human consumption when practiced in accordance with federal guidelines presents negligible risks to the consumer.

16. Comment: Tier 1 has temperature requirements, Tier 2 and 3 do not. Should they?

Response: "Facility Standards", Rule 0400-11-01-.11(2) states that Tier Two and Tier Three composting facilities have all the requirements of a Tier One composting facility, including all Tier One temperature conditions.

17. Comment: Tier 1 has no record keeping requirements but should since we are require such items as proper temperature.

Response: Tier 1 record requirements are outlined in Rule 0400-11-01-.11(4) "Records".

18. Comment: Temperatures should be stated in Fahrenheit, not Celsius to avoid confusion.

Response: The Department agrees and Fahrenheit conversions have been included.

19. Comment: Definition of biosolids is less stringent than definition in Biosolids Rule 0400-40-15-.01.

Response: The Department agrees and has adopted the definition of Biosolids consistent with Rule 0400-40-15-.01(8).

20. Comment: In Rule 0400-11-01-.11(1)(b)1, the last sentence appears to allow no fee for facilities that change their operation in the future.

Response: The Department agrees that this should only apply to current operations. The phrase "facilities which already have permit-by-rule" has been added to clarify this point.

21. Comment: In Rule 0400-11-01-.11(1)(b)1, change cross reference to paragraph (1) of Rule 0400-11-01-.02.

Response: The Department feels that cross referencing paragraph (3) is more applicable to Rule 0400-11-01-.11(1)(b)1 since it relates to permit application requirements.

22. Comment: In Rules 0400-11-01-.11(1)(b)4 and 5, add "only" in first sentence of both.

Response : The Department agrees that this clarification is appropriate and has added the word "only" to the first sentence in both part 4 and part 5 of Rule 0400-11-01-(1)(b)..

23. Comment: In Rule 0400-11-01-.11(1)(b)6, the use of the terms lower level of risk and higher level of risk seems contradictory.

Response: The Department agrees and has modified the language by removing the term "higher level of risk". In addition, part 6 was restructured to better explain what types of materials may be processed at a facility.

24. Comment: In Rule 0400-11-01-.11(2)(a)2(v), change cross reference to paragraph (1) of Rule 0400-11-01-.02.

Response: The Department agrees and has changed the cross reference.

25. Comment: In rule 0400-11-01-.11(2)(a)2(v), change second sentence to read: "Such financial assurance shall be in an amount determined by the Commissioner to be adequate to insure 30 days operation and proper closure of the facility."

Response: The Department agrees with this clarification and has modified subpart (2)(a)2(v) of Rule 0400-11-01-.11 to read, "Such financial assurance shall be in an amount determined by the Commissioner to be adequate to insure 30 days operation and proper closure of the facility".

26. Comment: In Rule 0400-11-01-.11(2)(a)2(vii), add requirement to submit CFOP to TDEC 30 days prior to making change in feedstock.

Response: The Department agrees that including language requiring the submittal of a Composting Facility Operations Plan will make it clear that changes in operation or feedstock must be evaluated by the Department and has modified the subpart to reflect this. However, a timeframe was not included to allow for some latitude in operations.

27. Comment: In Rule 0400-11-01-.11(2)(a)2(xv), should closure process include release of financial assistance?

Response: The process for release of financial assurance is found in subparagraph (3)(i) of Rule 0400-11-01-.03 "Maintenance/Release of Financial Assurance, and does not need to be repeated here.

28. Comment: In Rule 0400-11-01-.11(2)(b)2(ii), require all composting at Type 1 facilities to be conducted on the all-weather pad. The language now states, "All composting at Tier One composting facilities shall be conducted on an all-weather composting pad".

Response: The Department agrees and has modified the language to clarify the use of an all- weather pad for Tier I facilities.

29. Comment: In Rule 0400-11-01-.11(2)(b)2(ii)(I), clarify that item (III) is an exception to item (I) by starting in item (I) with, "Except as provided in item (III),..."

Response: The Department agrees and has modified item (I) to state: "Except as provided in item (III) of this subpart".

30. Comment: In Rule 0400-11-01-.11(2)(d)3(i), cite Chapter 0400-40-15 rather than federal rules on biosolids.

Response: The Department agrees that the recent State rules are more appropriate to cite and has modified the language to reflect this recommendation.

31. Comment: In Rule 0400-11-01-.11(2)(d)3(i), since there are applicable requirements in the biosolids rules that concern more than "sludge management", this sentence should be changed to, "Facilities that compost biosolids or sewage sludge shall comply with all applicable regulations regarding biosolids and sewage sludge in Rule Chapter 0400-40-15."

Response: The Department agrees and has modified the language to reflect this recommendation.

32. Comment: In Rule 0400-11-01-.11(1)(b)4, change "clean wood" to "woody material" to match definitions

Response: The Department agrees and has replaced "clean wood" with "woody material".

33. Comment: In Rule 0400-11-01-.11(2)(b)2(ii)(II), clarify the "the first 5 feet" by adding "of the surface"

Response: The Department agrees and has modified the language to "the first 5 feet of the surface".

Regulatory Flexibility Addendum

Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rule making process as described in T.C.A. § 4-5-202(a)(3) and T.C.A. § 4-5-202(a), all agencies shall conduct a review of whether a proposed rule or rule affects small businesses.

This proposed rule revision is based on the Model Compost Rule Template as set forth by the U.S. Composting Council, 5400 Grosvenor Lane, Bethesda, MD 20814. The template is a compilation of composting information submitted by industry and regulatory leaders across the nation, including the U.S. EPA, who participated in the development of the model rule template. The revision is based on a three-tier facility classification with specific feedstocks that are used at the different tier levels. This revision provides better composting practices and composting opportunities for our State on a local level.

- (1) The type or types of small business and an identification and estimate of the number of small businesses subject to the proposed rule that would bear the cost of, or directly benefit from the proposed rule.

Small business which compost large quantities of materials from outside sources as part of their operations will be required to obtain a permit. There are currently five or fewer of these businesses identified.

- (2) The projected reporting, recordkeeping, and other administrative costs required for compliance with the proposed rule, including the type of professional skills necessary for preparation of the report or record.

Permitted facilities under these rule changes will have to maintain a Composting Facility Operations Plan in addition to the initial permit application. The facility will also be required to document such items as feedstocks and windrow temperatures. The documents can be maintained without specialty professional skill by a qualified composting facility manager.

- (3) A statement of the probable effect on impacted small businesses and consumers.

The proposed rules have minimal effect on small business. Some small businesses will qualify for exemptions. Small business operations that require permits under these rule changes would require a permit under existing rules. Fee structures have not changed.

- (4) A description of any less burdensome, less intrusive or less costly alternative methods of achieving the purpose and objectives of the proposed rule that may exist, and to what extent the alternative means might be less burdensome to small business.

There are no less burdensome, less intrusive or less costly alternatives to achieving the purpose and objectives of this proposed rule.

- (5) A comparison of the proposed rule with any federal or state counterparts.

These rules are based on the Model Compost Rule Template as set forth by the U.S. Composting Council. Currently three other states; Maryland, Georgia and South Carolina have adopted rules based on the template. Other states are expected to follow in the future.

- (6) Analysis of the effect of the possible exemption of small businesses from all or any part of the requirements contained in the proposed rule.

Agricultural small businesses are exempt under most conditions. Small businesses that compost their own waste streams on site will often be exempted. Small businesses that compost 400 cubic yards of type one feedstock, or 50 cubic yards of type two feedstock openly, or 100 cubic yards in-vessel will be exempted.

Impact on Local Governments

Pursuant to T.C.A. §§ 4-5-220 and 4-5-228 "any rule proposed to be promulgated shall state in a simple declarative sentence, without additional comments on the merits of the policy of the rules or regulation, whether the rule or regulation may have a projected impact on local governments." (See Public Chapter Number 1070 (<http://state.tn.us/sos/acts/106/pub/pc1070.pdf>) of the 2010 Session of the General Assembly)

The Department anticipates that there will be a positive impact on local governments.

Additional Information Required by Joint Government Operations Committee

All agencies, upon filing a rule, must also submit the following pursuant to T.C.A. § 4-5-226(i)(1).

- (A) A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

This rulemaking primarily revises Rule 0400-11-01-.11 Requirements for Compost and Composting Facilities. This proposed rule revision is based on the Model Compost Rule Template as set forth by the U.S. Composting Council, 5400 Grosvenor Lane, Bethesda, MD 20814. The template is a compilation of composting information submitted by industry and regulatory leaders across the nation who participated in the development of the model rule template. The revision is based on a three-tier facility classification with specific feedstocks that are used at the different tier levels. This revision provides better composting practices and composting opportunities for our State on a local level. Revisions to Rules 0400-11-01-.01 and 0400-11-01-.02 are being made to support the changes in Rule 0400-11-01-.11.

- (B) A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

These rules are being promulgated under the authority of T.C.A. §§ 68-211-101 et seq.

- (C) Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

Environmental citizen groups, neighborhood food co-ops and some educational institutions have urged adoption of this rule as it allows for permit exemptions for small scale composting operations which take in feedstocks from multiple locations. Currently permitted composting facilities will have to modify existing permits to come into line with these new regulations; however less than five facilities will be affected. Most local governments that wish to begin operations that fall into Tier One and Tier Two categories should find obtaining a permit to be less difficult than in the past.

- (D) Identification of any opinions of the attorney general and reporter or any judicial ruling that directly relates to the rule;

The Department is not aware of any opinions or judicial rulings that directly relate to this rule.

- (E) An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency's annual budget or five hundred thousand dollars (\$500,000), whichever is less;

The Department will collect \$1000 in application processing fees for each new permit. The permits will also net an additional \$3000 in annual maintenance fees for each facility; however many facilities are expected to qualify for an annual maintenance fee exemption if they beneficially use 75% of their feedstock and request the exemption. The Department expects only 1 to 3 new permit applications per year. The Department expects a mix of government and private sector applicants. The Department expects any local government sponsored permitted facility to experience some cost saving from their normally incurred disposal expenses by diverting material towards composting operations and possibly generate some revenue from the sale of finished compost.

- (F) Identification of the appropriate agency representative or representatives, possessing substantial knowledge and understanding of the rule;

Nick Lytle
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William R. Snodgrass Tennessee Tower
312 Rosa L. Parks Avenue, 14th Floor
Nashville, Tennessee 37243
nickolaus.lytle@tn.gov

- (G) Identification of the appropriate agency representative or representatives who will explain the rule at a scheduled meeting of the committees;

Jenny Howard
Deputy General Counsel
Office of General Counsel

- (H) Office address, telephone number, and email address of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

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- (I) Any additional information relevant to the rule proposed for continuation that the committee requests.

The Department is not aware of any additional relevant information.

Additional Information Required by Joint Government Operations Committee

All agencies, upon filing a rule, must also submit the following pursuant to T.C.A. § 4-5-226(i)(1).

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This rulemaking primarily revises Rule 0400-11-01-.11 Requirements for Compost and Composting Facilities. This proposed rule revision is based on the Model Compost Rule Template as set forth by the U.S. Composting Council, 5400 Grosvenor Lane, Bethesda, MD 20814. The template is a compilation of composting information submitted by industry and regulatory leaders across the nation who participated in the development of the model rule template. The revision is based on a three-tier facility classification with specific feedstocks that are used at the different tier levels. This revision provides better composting practices and composting opportunities for our State on a local level. Revisions to Rules 0400-11-01-.01 and 0400-11-01-.02 are being made to support the changes in Rule 0400-11-01-.11.

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- (F) Identification of the appropriate agency representative or representatives, possessing substantial knowledge and understanding of the rule;

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- (G) Identification of the appropriate agency representative or representatives who will explain the rule at a scheduled meeting of the committees;

Jenny Howard
Deputy General Counsel
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- (H) Office address, telephone number, and email address of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

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- (I) Any additional information relevant to the rule proposed for continuation that the committee requests.

The Department is not aware of any additional relevant information.

**Department of State
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For Department of State Use Only

Sequence Number: 04-06-16
Rule ID(s): 6175
File Date: 4/8/16
Effective Date: 7/7/16

Rulemaking Hearing Rule(s) Filing Form

Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing (Tenn. Code Ann. § 4-5-205).

Pursuant to Tenn. Code Ann. § 4-5-229, any new fee or fee increase promulgated by state agency rule shall take effect on July 1, following the expiration of the ninety (90) day period as provided in § 4-5-207. This section shall not apply to rules that implement new fees or fee increases that are promulgated as emergency rules pursuant to § 4-5-208(a) and to subsequent rules that make permanent such emergency rules, as amended during the rulemaking process. In addition, this section shall not apply to state agencies that did not, during the preceding two (2) fiscal years, collect fees in an amount sufficient to pay the cost of operating the board, commission or entity in accordance with § 4-29-121(b).

Agency/Board/Commission:	Environment and Conservation
Division:	Solid Waste Management
Contact Person:	Nick Lytle
Address:	William R. Snodgrass Tennessee Tower 312 Rosa L. Parks Avenue, 14th Floor Nashville, Tennessee
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Revision Type (check all that apply):

☒ Amendment
☐ New
☐ Repeal

Rule(s) Revised (ALL chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please enter only **ONE Rule Number/Rule Title per row)**

Chapter Number	Chapter Title
0400-11-01	Solid Waste Processing and Disposal
Rule Number	Rule Title
0400-11-01-.01	Solid Waste Disposal Control System: General
0400-11-01-.02	Permitting of Solid Waste Storage, Processing, and Disposal Facilities
0400-11-01-.11	Requirements for Compost and Composting Facilities

(Place substance of rules and other info here. Statutory authority must be given for each rule change. For information on formatting rules go to <http://state.tn.us/sos/rules/1360/1360.htm>)

Amendments

Chapter 0400-11-01 Solid Waste Processing and Disposal

Paragraph (2) of Rule 0400-11-01-.01 Solid Waste Disposal Control System: General is amended by deleting the definitions for "Board," "Compost disinfection," "Foreign matter," "Manure," "Mesophilic stage," "Normal farming operations," "Stabilized" and Thermophilic stage."

~~"Board" means the Tennessee Solid Waste Disposal Control Board established by T.C.A. § 68-211-111.~~

~~"Compost disinfection" means the selective destruction of pathogens indicated by a reduction in indicator organisms to less than or equal to 1000 fecal coliform most probable number per gram of volatile suspended solid where the organic solid waste was maintained at or above 55° C (= 131° F) for three consecutive days in a mechanical composter or in an aerated, insulated static pile, or for 15 cumulative days in an aerated windrow with at least one turning or a nonaerated windrow with at least four turnings of the windrow.~~

~~"Foreign matter" means the inorganic and organic constituents in a solid waste stream that are not readily decomposed and that may be present in the compost. For purposes of this rule, foreign matter is metals, glass, plastics, rubber, bones, leather, and other similar materials, but does not include sand, grit, rocks or other similar materials.~~

~~"Manure" means a solid waste composed of excreta of herbivorous domestic animals, and residual materials that have been used for bedding, sanitary or feeding purposes for such animals.~~

~~"Mesophilic stage" means a biological stage in the composting process characterized by active bacteria which favor a moderate temperature range of 20° C to 45° C. It occurs later in a composting process after the thermophilic stage and is associated with a moderate rate of decomposition.~~

~~"Normal farming operations" means the customary and generally accepted activities, practices and procedures that farmers adopt use or engage in during the production and preparation for market of poultry, livestock, and associated farm products; and in the production and harvesting of agricultural crops which include agronomic, horticultural, and silvicultural crops. Included is the management, collection, storage, composting, transportation and use of organic agricultural waste, manure, and wastes solely derived from agricultural crops.~~

~~"Stabilized" means that the compost has at least passed through the thermophilic stage, and that biological decomposition of the solid waste has occurred to a sufficient degree that will allow beneficial use.~~

~~"Thermophilic stage" means a biological stage in the composting process characterized by active bacteria which favor a high temperature range of 45° C to 75° C. It occurs early in a composting process before the mesophilic stage and is associated with a high rate of decomposition.~~

Authority: T.C.A. §§ 68-211-101 et seq., 68-211-701 et seq., 68-211-801 et seq. and 4-5-201 et seq.

Paragraph (2) of Rule 0400-11-01-.01 Solid Waste Disposal Control System: General is amended by deleting the definition of "Compostable material" in its entirety and substituting instead the following:

"Compostable material" means solid organic waste that may be decomposed under controlled conditions by micro-organisms under aerobic or anaerobic conditions which result in a stable humus-like material free of pathogenic organisms (e.g., food wastes, yard wastes, and low moisture content wastewater sludge).

Authority: T.C.A. §§ 68-211-101 et seq., 68-211-701 et seq., 68-211-801 et seq. and 4-5-201 et seq.

Paragraph (2) of Rule 0400-11-01-.01 Solid Waste Disposal Control System: General is amended by adding the following definitions in alphabetical order:

"Aerated static pile composting" means a process in which decomposing organic material is placed in piles over an air supply system that can be used to supply oxygen and control temperature for the purpose of producing compost. Piles must be insulated to assure that all parts of the decomposing material reach and maintain temperatures at or above 55°C (131°F) for a minimum of 3 days.

"Agricultural residuals" means materials generated by the customary and generally accepted activities, practices, and procedures that farmers engage in during the production and preparation for market of poultry, livestock and associated farm products; from the production and harvesting of agricultural crops, which include agronomic, horticultural, and silvicultural crops; and materials resulting from aquacultural production. Includes manures not managed as part of a Confined Animal Feeding Operation (CAFO) permit.

"Biosolids" means treated sewage sludge that have contaminant concentrations less than or equal to the contaminant concentrations listed in Table 1 of subparagraph (3)(b) of Rule 0400-40-15-.02, meet any one of the ten vector attraction reduction options listed in part (4)(b)1, 2, 3, 4, 5, 6, 7, 8, 9, or 10 of Rule 0400-40-15-.04, and meet either one of the six pathogen reduction alternatives for Class A listed in part (3)(a)3, 4, 5, 6, 7, or 8, or one of the three pathogen reduction alternatives for Class B listed in part (3)(b)2, 3, or 4 of Rule 0400-40-15-.04.

"Board" means the Tennessee Underground Storage Tanks and Solid Waste Disposal Control Board established by T.C.A. § 68-211-111.

"Capacity" means the amount of material, in tons or cubic yards, a compost facility can hold at any one time. Includes feedstocks, actively composting and curing material, and final product storage.

"Certificate of completion" means a document issued by a certifying organization stating that the compost facility operations manager has met the requirements for the specified operations manager program.

"Composting pad" means the ground on which composting activities take place. May be subdivided by function, such as "mixing pad", "composting pad", "curing pad" or "storage pad". An "all-weather composting pad" is one of sufficient construction, firmness and grading so that composting equipment can manage the process during normal inclement weather, including expected rain, snow and freezing temperatures.

"Contact water" means water that has come in contact with raw feedstocks or active composting piles. It does not include water from curing piles, finished compost or product storage piles.

"Crop residues" means materials generated by the production, harvesting and processing of agricultural or horticultural plants. These residues include but are not limited to stalks, stems, leaves, seed pods, husks, bagasse, and roots.

"Curing" means a continuation of the composting process after the high heat stage during which stability and maturity continues to increase. For the purposes of these regulations, compost enters the curing stage after completing the process to further reduce pathogens and the requirements for vector attraction reduction.

"Food processing residuals" means organic materials generated as a by-product of the industrial food processing sector that are non-toxic, non-hazardous, and contain no sanitary wastewater. The term does not include fats, oil, grease and Dissolved Air Flotation (DAF) skimmings.

"Industrial by-product" means materials generated by manufacturing or industrial processes that are non-toxic, non-hazardous, contain no domestic wastewater, and pass the paint filter test (Method 9095B).

"In-vessel composting" means a process in which decomposing organic material is enclosed in a drum, silo, bin, tunnel, or other container for the purpose of producing compost; and in which temperature, moisture and air-borne emissions are controlled, vectors are excluded and nuisance and odor generation minimized.

"Mixed solid waste" means a mixture of organic and inorganic discards and may contain household and other municipal solid wastes that are excluded from regulation as hazardous wastes.

"Source separated organics" means organic material that has been separated from non-compostable material at the point of generation, including but not limited to yard trimmings, food residuals, vegetative materials, woody materials, and compostable products.

"Stability" means the inverse measure of the potential for a material to rapidly decompose. Measured by indicators of microbial activity, such as carbon dioxide production, oxygen uptake, or self-heating.

"Throughput" means the amount of material, not to include bulking agents, in tons or cubic yards, a facility can process in a given amount of time.

"Windrow composting" means a process in which decomposing organic materials are placed in long rows for the purpose of producing compost. The rows are periodically turned or agitated to assure all parts of the decomposing material reach the desired stability.

"Woody material" means residuals and by-products of cutting trees, including but not limited to tree stumps, sawdust, pallets, and dimensional lumber that has not been treated chemically or with adhesives and coatings such as paint, glue, or any other visible contaminant.

"Yard trimmings" means leaves, grass clippings, brush, garden materials, tree trunks, tree stumps, holiday trees, and prunings from trees or shrubs. Can also include vegetative materials resulting from the use of commercial products, including but not limited to discarded flowers, potted flowers, or grave blankets that do not include plastic, metal, polystyrene foam, or other non-biodegradable material.

Authority: T.C.A. §§ 68-211-101 et seq., 68-211-701 et seq., 68-211-801 et seq. and 4-5-201 et seq.

Subparagraph (a) of paragraph (2) of Rule 0400-11-01-.02 Permitting of Solid Waste Storage, Processing, and Disposal Facilities is amended by adding a new part 7 to read as follows:

7. A Tier One composting facility, if:

- (i) The operator complies with the notification requirements of subparagraph (b) of this paragraph;
- (ii) The operator attaches to his notification all attachments required in the Composting Facility Operation Plan by subpart (2)(a)2(vii) of Rule 0400-11-01-.11; and
- (iii) The facility is designed and operated in compliance with Rule 0400-11-01-.11.

Authority: T.C.A. §§ 68-211-101 et seq., 68-211-701 et seq., 68-211-801 et seq. and 4-5-201 et seq.

Rule 0400-11-01-.11 Requirements for Compost and Composting Facilities is amended by deleting it in its entirety and substituting instead the following:

Rule 0400-11-01-.11 Requirements for Compost and Composting Facilities

(1) General

(a) Purpose - The purpose of this rule is to establish procedures, documentation, and other requirements which must be met in order for a person to operate a composting facility ~~or offer for sale compost~~ in Tennessee.

(b) Scope/Applicability

- 1. The requirements of this rule apply as specified to operators of composting facilities in Tennessee. Except as specifically provided elsewhere in these rules, no facility may

compost solid waste without a permit as provided in paragraph (3) of Rule 0400-11-01-.02. Composting facilities, subject to a full permit on the effective date of this rule, must submit a part I and part II permit application to describe how it will comply with this rule. The application must be filed within 180 days of the effective date of this rule and implemented upon approval. The Division will not charge an application fee, nor require public notice of the application for facilities which already have permit-by-rule for composting.

~~2. Compost produced from the solid waste classification criteria outside the State of Tennessee, which is used or sold for use within the state, shall comply with subparagraphs (4)(a), (b) and (c) of this rule.~~

~~3.2. Composting facilities that process domestic biosolids or sewage sludge as a feedstock shall also comply with all other applicable federal or state laws regarding sludge management.~~

~~4.3. The following facilities or activities are not subject to the requirement to have a permit.~~

(i) Backyard composting and the resulting compost;

(ii) ~~Normal farming operations. For the purpose of this rule, composting of only landscaping/land-clearing waste, hereafter referred to as landscaping waste, or manure by persons on their own property for their own use on that property as part of agronomic or horticultural operations will be considered normal farming operations; Animal and crop production operations that compost yard trimmings, agricultural residuals, mortalities, woody materials, and/or food scraps provided that the following conditions are met:~~

~~(I) The owner of the composting facility is the same as the owner of the animal or crop production operation where the yard trimmings, agricultural residuals, mortalities, food scraps, and woody materials are generated;~~

~~(II) The composting facility is located on property owned or leased by the animal or crop production operation;~~

~~(III) All compost produced is utilized exclusively at an animal or crop production operation;~~

~~(iii) Any composting facility with a throughput of less than 400 cubic yards of Type 1 feedstock during any calendar year;~~

~~(iv) Any composting facility with a throughput of less than 50 cubic yards of Type 2 feedstock during any calendar year; and~~

~~(v) Any composting facility with a throughput of less than 100 cubic yards of Type 2 feedstock in any calendar year using an in-vessel composting method.~~

~~4. A Tier One composting facility may only process Type 1 feedstocks. Type 1 feedstocks include source separated yard trimmings, woody material, crop residues, and other materials determined to pose a low level of risk to human health and the environment, including from physical contaminants and human pathogens.~~

~~5. A composting facility processing up to 10,000 cubic yards per year of only landscaping waste and manure may receive a permit pursuant to paragraph (2) of Rule 0400-11-01-.02 Permits by Rule, for Solid Waste Processing. A Tier Two composting facility may only process Type 1 and/or Type 2 feedstocks. Type 2 feedstocks include agricultural residuals, source-separated organics, and food processing residuals and industrial by-products as approved by the Department. Type 2 feedstocks are materials that the Department determines to pose a low level of risk to human health and the environment~~

despite having more physical contaminants and human pathogens than Type 1 feedstocks.

6. A composting facility processing only landscaping waste may receive a permit pursuant to paragraph (2) of Rule 0400-11-01-.02 Permits by Rule, for Solid Waste Processing. A Tier Three composting facility may process Type 1, Type 2 and/or Type 3 feedstocks. Type 3 feedstocks include mixed solid waste, diapers, sewage sludge, biosolids, and industrial by-products and food processing residuals not covered in Type 2. They also include other materials the Department determines to pose a low level of risk to human health and the environment despite having more physical contaminants and human pathogens than Types 1 and Type 2 feedstocks.
7. A processing facility composting sewage sludge that is one acre or less in size may apply for a permit by rule pursuant to paragraph (2) of Rule 0400-11-01-.02. Tier One composting facilities may apply for a permit by rule pursuant to part (2)(a)7 of Rule 0400-11-01-.02.
8. No waste defined as hazardous waste under subparagraph (1)(c) of Rule 0400-12-01-.02 may be received for composting. Feedstocks containing industrial by-products, sewage sludge or biosolids are subject to a hazardous waste determination, in accordance with subparagraph (1)(b) of Rule 0400-12-01-.03, and must be approved in writing by the Division before being accepted at the facility.

(2) General Facility Standards - Unless specifically noted otherwise, the standards of this paragraph shall apply to all compost facilities subject to a permit as provided at paragraph (3) of Rule 0400-11-01-.02 and Tier One permit by rule facilities.

(a) Performance General Facility Design and Operating Standards -The facility must be located, designed, constructed, and maintained, and closed in such a manner as to minimize to the extent practicable:

1. The propagation, harborage, or attraction of birds, flies, rodents, or other vectors; All compost facilities shall meet the following design standards in order to operate in a manner that is protective of human health and the environment:

(i) The feedstock receiving, processing and storage areas must be clearly defined and the maximum throughput and capacity specified.

(ii) The composting facility shall have all-weather access roads. The facility shall be designed such that access to the composting facility shall be limited to authorized entrances, which shall be secured from public access when the facility is not in operation.

(iii) Contact Water Collection

(I) The facility shall have a contact water collection system that is properly managed.

(II) Contact water shall be reused in the process or otherwise properly managed as per all applicable laws and rules.

(f)(iv) Litter Control - Fencing and/or other control shall be provided to confine loose waste to the area designated for storage or processing; Accidental dispersal from the designated areas shall be recovered daily.

(g)(v) Personnel Facilities - There shall be provided:

4-(I) A building or other shelter which is accessible to facility personnel which has adequate heating and light.

~~2-(II)~~ Potable water for washing and drinking.

~~3-(III)~~ Toilet facilities.

~~(i)-(vi)~~ Operating Equipment - The facility shall have on-site operational and monitoring equipment capable of maintaining the waste processing as designed.

~~(i)-(vii)~~ Endangered Species - Facilities shall be located, designed, constructed, operated, maintained, closed, and cared for during the post-closure care period in a manner that does not:

~~4-(I)~~ Cause or contribute to the taking of any endangered or threatened species of plants, fish, or wildlife; or

~~2-(II)~~ Result in the destruction or adverse modification of the critical habitat of endangered or threatened species.

~~(m)-(viii)~~ Location in Floodplains- Facilities shall not be located in a 100-year floodplain, unless the demonstration is made to the Commissioner as required at subparagraph (2)(n) of Rule 0400-11-01-.04.

~~(n)-(ix)~~ Wetlands - The facility shall not be located in a wetland unless the demonstration is made to the Commissioner as required at subparagraph (2)(p) of Rule 0400-11-01-.04.

~~(3)-(x)~~ Buffer Zone Standards for Siting New Facilities - All waste management areas shall be located so as to conform to the distance standards at subparagraph (3)(a) of Rule 0400-11-01-.04.

2. ~~The potential for releases of solid waste, solid waste constituents, or other potentially harmful material to the environment except in a manner authorized by state law; All compost facilities shall meet the following operational standards:~~

~~(i)~~ Contingency operations shall identify proper management of all waste in the event of equipment failure, facility disaster, or receipt of unauthorized material such as oil, hazardous waste, etc.

~~(e)-(ii)~~ Fire Safety

~~1-(I)~~ No open burning is allowed.

~~2-(II)~~ The facility shall have, on-site and continuously available, properly maintained fire suppression equipment capable of controlling accidental fires. If available, local firefighting service shall be acquired.

~~(h)-(iii)~~ Communication - The facility shall have available during operating hours equipment capable of summoning emergency assistance as needed.

~~(j)-(iv)~~ Dust Control - The operator must take dust control measures as necessary to prevent dust from creating a nuisance or safety hazard to adjacent landowners or to persons engaged in supervising, operating, and using the site. The use of any dust suppressants (other than water) must be approved in writing beforehand by the Department.

~~(p)-(v)~~ The owner/operator of a compost facility permitted pursuant to paragraph ~~(3)~~ (1) of Rule 0400-11-01-.02 shall file with the Commissioner a performance bond or equivalent cash or securities, payable to the State of Tennessee. Such financial assurance is intended to ensure that adequate financial resources are available to the Commissioner shall be in an amount determined by the Commissioner to be adequate to insure 30 days operation and proper closure of the facility. The

types of financial assurance instruments that are acceptable are those which are specified in subparagraph (3)(d) of Rule 0400-11-01-.03. Such financial assurance shall meet the criteria set forth in T.C.A. § 68-211-116 and at subparagraph (3)(b) of Rule 0400-11-01-.03.

- (vi) Facility operations manager, person responsible for the day-to-day operation, must be able to document training in the basics of compost facility operations within the first year of supervising the facility. Training must consist of classroom and hands-on course work and conclude with a certificate of completion that must be kept on site at all times. Appropriate compost operations training must be approved by the Department.
- (vii) Facilities must follow a Composting Facility Operations Plan (CFOP) — reviewed and approved as part of the permit application — that describes operational procedures (methods and practices) to comply with the intent of regulations to protect human health and the environment and not create nuisances. This includes measures to control nuisance odors, vectors, fires, contact water and stormwater, provisions for the annual maintenance of the all-weather composting pads, as well as provisions for prompt equipment repair or replacement when needed. The CFOP must be internally reviewed annually to ensure it continues to reflect current procedures, equipment and feedstock(s). The CFOP must be updated when there is a change to procedures (including equipment) or the types of feedstocks processed, and reflect how the facility will continue to comply with the intent of the rules. The CFOP must be available to the permitting authority upon request. The Department shall be informed in writing of any proposed changes to the CFOP for approval prior to implementation.
- (viii) Facilities shall be maintained in a clean and sanitary condition, e.g., free of unsecured trash at end of each operating day.
- (ix) Operators of composting facilities shall comply with all local rules, regulations, and ordinances pertaining to their facilities.
- (x) Contact water generated shall be directed to a containment, recycling, and/or treatment system sized to handle at a minimum a 24-hr 25-yr storm event.
- (xi) Storage of finished compost on site is limited to 12 months of production, unless approved by the Department on a case-specific basis.
- (xii) No material may be stored in excess of the designated capacity.
- (xiii) Non-compostable waste shall be removed or stored in a waste container and/or containment area, and disposed or recycled at a permitted solid waste facility in a timeframe approved in the CFOP.
- (xiv) The composting area shall be maintained and repaired, as needed.
- (xv) Closure - The facility must meet closure requirements described herein. The facility is finally closed by removal of all solid wastes and solid waste residues for proper disposal. The operator must notify the Commissioner in writing of his completion of closure of the facility. Such notification must include a certification by the operator that the facility has been closed by removal of all the solid waste and residues. Within 21 days of the receipt of such notice the Commissioner shall inspect the facility to verify that closure has been completed. Within 10 days of such verification, the Commissioner shall approve the closure in writing to the operator. Closure shall not be considered final and complete until such approval has been made.

(xvi) The facility shall have a sign at the entrance of the facility that lists the following: name of facility; operating permit number; hours of operation; and emergency contact information.

(xvii) The facility must manage and process feedstocks in a timeframe that minimizes odors, contact water, release of feedstock liquids, fire and scavenging by vectors.

3. ~~The exposure of the public to potential health and safety hazards through uncontrolled or unauthorized public access;~~

4. ~~The presence of odors that constitute a nuisance.~~

(b) Control of Access and Use Tier One Facility Design and Operating Standards

1. ~~The facility shall have a natural or an artificial barrier which completely surrounds the active portion of the facility and must have a means to control entry, at all times, through the gate or other entrances to the active portion of the facility. Tier One composting facilities may process Type 1 feedstocks only.~~

2. ~~If open to the public, the facility shall have clearly visible and legible signs at the points of public access which indicate the hours of operation, the types of waste materials that either will or will not be accepted, emergency telephone numbers, schedules of charges (if applicable), and any other necessary information. Tier One facilities shall meet the following design standards in order to operate in a manner that is protective of human health and the environment:~~

(i) The composting area should have run on and run off control and slope of 1 to 6 percent as determined by site conditions to direct contact water to the appropriate collection, storage and treatment system.

(ii) All composting at Tier One composting facilities shall be conducted on an all-weather composting pad, except for those facilities operating on a seasonal basis only (e.g., fall leaves and spring yard cleanouts). The all-weather pad must meet the following criteria:

(I) Except as provided in item (III) of this subpart, the pad surface shall be 5 feet or more from the top of the seasonal high water table of the uppermost aquifer or the top of the formation of a confined aquifer;

(II) Soils within the first 5 feet of the surface shall exhibit hydraulic conductivity of 1.0×10^{-6} cm/s. If soil depth to seasonal high water table is 10 feet or greater, a geologic buffer consisting of 10 feet of clay with a maximum hydraulic permeability of 1.0×10^{-5} may be used;

(III) If less than 5 feet from the top of the seasonal high water table an improved low permeability surface is required for tipping, mixing and active composting areas. The improved low permeability surface shall consist of concrete, asphalt or other approved material capable of withstanding heavy equipment and preventing contamination of the uppermost aquifer; and

(IV) All weather pad shall be of sufficient slope to direct contact water to the appropriate collection, storage and treatment system. The pad shall also be constructed in such a manner as to prevent run-on of storm water to the extent practicable.

3. ~~The facility shall have paved (paved includes compacted stone) access roads and parking areas. Traffic control signs shall be provided as necessary. Tier One facilities shall meet the following operational standards:~~

(i) Compost processing time and temperatures shall be sufficient to kill weed seeds, reduce pathogens and vector attraction, and produce compost that meets the stability necessary for the intended use. Pathogen and vector attraction reduction compliance achieved as follows:

(I) Windrow composting: the compost material must be maintained at a minimum average temperature of 55°C (131°F) or higher for 15 days or longer. During the period when the compost is maintained at 55°C (131°F) or higher, there shall be a minimum of five turnings of the windrow with a minimum of 3 days between turnings. The 15 or more days at or above 55°C (131°F) do not have to be continuous; and

(II) Aerated static pile or in-vessel composting process: Material maintained at a minimum average temperature of 55°C (131°F) or higher for three continuous days, followed by at least 14 days with a minimum of 45°C (113°F).

4. ~~The facility shall have trained personnel present and on duty during operating hours to assure compliance with operational requirements and to prevent entry of unauthorized wastes.~~

5. ~~There shall be no scavenging.~~

6. ~~Scales for weighing all waste received at the facility shall be provided, unless the Commissioner approves an alternative method of measurement.~~

(c) Leachate Collection Tier Two Facility Design and Operating Standards

1. ~~The facility shall have a leachate collection and removal system that is designed, constructed, and maintained such that all leachate from the waste receiving, storage, processing, and curing areas is collected. All washdown, stormwater or other water coming into contact with solid waste or compost must be collected and properly managed. Tier Two composting facilities shall process Types 1 and/or 2 feedstocks only.~~

2. ~~Leachate shall be reused in the process or otherwise properly managed as per all applicable laws and rules. Tier Two facilities shall meet the following design standards in order to operate in a manner that is protective of human health and the environment:~~

(i) Owner or operator must submit an engineering design report for approval with facility application.

(ii) Tipping, mixing, active composting, curing, screening and finished compost storage areas must be on an all-weather pad as described at (b)2(ii) of this paragraph.

(iii) The maximum composting process windrow or pile size and minimum composting process windrow or pile spacing shall match the capability and requirements of the equipment used at the facility. As pile height increases, windrows or piles should be monitored to minimize compaction, a potential cause of odor.

(iv) A plan and procedure for monitoring the temperature and moisture during composting shall be provided, and should demonstrate that PFRP (Process to Further Reduce Pathogens, USEPA 40 CFR Part 503) is met. The temperature and moisture ranges for the composting cycle shall be specified. The plan shall include contingencies for not meeting the specified ranges for the composting process.

3. Tier Two facilities shall meet the following operational standards:

- (i) Feedstocks with free liquid shall be mixed with drier feedstocks, bulking material or compost so that the liquid is promptly adsorbed and not allowed to flow as free liquid from the compost piles or windrows. Free liquid that is not adsorbed shall be managed as contact water and directed to a containment or treatment system.
- (ii) By the end of each operating day, all incoming feedstocks must be processed into the active composting pile, transferred to leak-proof containment or mixed with bulking material and covered in a manner that minimizes nuisance odors and scavenging by vectors.
- (iii) Compost processing time and temperatures shall meet PFRP and vector attraction reduction requirements, and produce compost that meets the stability necessary for the intended use. Pathogen and vector attraction reduction compliance is achieved as follows:
 - (I) Windrow composting: the compost material must be maintained at a minimum average temperature of 55°C (131°F) or higher for 15 days or longer. During the period when the compost is maintained at 55°C (131°F) or higher, there shall be a minimum of five turnings of the windrow with a minimum of 3 days between turnings. The 15 or more days at or above 55°C (131°F) do not have to be continuous; and
 - (II) Aerated static pile or in-vessel composting process: Material maintained at a minimum average temperature of 55°C (131°F) or higher for three continuous days, followed by at least 14 days with a minimum of 45°C (113°F).

(d) Waste Management Tier Three Facility Design and Operating Standards

- 1. The type [defined at part (4)(a)1 of this rule] and source of solid waste to be received shall be determined and categorized for review. This listing shall be updated as appropriate. Tier Three composting facilities may process Types 1, 2 and/or 3 feedstocks.
- 2. The type and source of any additives to be used in the production of compost shall be specified. Tier Three composting facilities shall comply with design standards for Tier 2 composting facilities and the additional design standards listed below:
 - (i) The working surfaces for all receiving, mixing, active composting and storage areas must be designed, constructed, and maintained to prevent conditions of contamination, pollution, and nuisance. All working surfaces must have a hydraulic conductivity of 1x10⁻⁵ cm/s or less, and meet one the following construction and material specifications:
 - (I) Asphalt concrete or Portland cement concrete designed to minimize the potential for cracking and to allow equipment to operate without damage;
 - (II) Compacted soil, with a minimum thickness of one foot and protected from desiccation and installed in a manner such that the integrity will not be impaired by the operation of heavy equipment used at the composting and storage area; or
 - (III) An equivalent engineered alternative.
- 3. The facility's waste inspection procedures shall be established to prevent the receipt of unauthorized or unacceptable waste. Inspection of all loads received is required. Tier Three composting facilities shall meet the operational standards for Tier Two composting facilities and the additional operational standard listed below:

(i) Facilities that compost biosolids or sewage sludge shall comply with all applicable regulations regarding biosolids and sewage sludge in Rule Chapter 0400-40-15.

4. ~~Contingency operations shall identify proper management of all waste in the event of equipment failure, facility disaster, or receipt of unauthorized material such as oil, hazardous waste, etc.~~

5. ~~The surfaces for all waste receiving areas, storage areas, and processing and curing areas shall be paved to minimize release of any contaminants to the groundwater. The paved areas shall be capable of withstanding wear and tear during normal operations. The standards for surfaces for facilities shall be as follows:~~

(i) ~~Facilities receiving waste types categorized as solid waste or landscaping waste and manure shall utilize a surface of asphalt or concrete or other surface approved by the Commissioner.~~

(ii) ~~Facilities receiving only the landscape waste type may utilize a surface of compacted gravel or the surfaces authorized in subpart (i) of this part.~~

6. ~~Landscaping waste shall be stored separately from other solid waste at the facility. Solid waste shall be stored in a manner to prevent vectors. Unusable material must be identified and removed within 48 hours.~~

7. ~~Recovered materials removed from the solid waste stream shall be stored in a manner that prevents vector problems and shall be sent to a vendor or processor at least every thirty (30) days.~~

(k) ~~Run-on/Run-off Control~~

1. ~~The operator shall design, construct, and maintain a run-on control system capable of preventing the 25-year, 24-hour storm from flowing onto all operational and storage areas.~~

2. ~~The operator shall design, construct, and maintain a run-off management system capable of minimizing impact to adjoining properties during the 25-year, 24-hour storm.~~

3. ~~Run-off shall be managed separately from leachate unless otherwise approved by the Commissioner.~~

(q) ~~Compost from facilities subject to a full permit in this rule must meet the appropriate criteria for "compost disinfection" as defined in definitions at Rule 0400-11-01-.01.~~

(3) Testing – Tier 2 and 3 facilities shall meet the following test standards and requirements:

(a) Samples and measurements taken for the purpose of product testing shall be representative of the composting activity and shall be conducted in a manner consistent with Test Methods for Evaluation of Compost and Composting (TMECC) or other applicable standards pre-approved by the relevant agency.

(b) The minimum number of samples that shall be collected and analyzed is shown below. Samples to be analyzed shall be composted prior to the analysis.

<u>Compost Quantity¹</u>	<u>Frequency</u>
<u>1 – 2500 tons²</u>	<u>1 per quarter (or less for seasonal operation)</u>
<u>2501 – 6200 tons</u>	<u>1 per quarter</u>
<u>6201 – 17500 tons</u>	<u>1 per 2 months</u>
<u>17501 tons and above</u>	<u>1 per month</u>

¹ Either the amount of finished compost applied to the land or prepared for sale or give away for application to the land (on as "as is" (wet weight) basis).

² For facilities without scales use 800 lb/yd³ conversion factor.

If test results show the finished product is stable and in compliance with both metals and pathogens standards for a two year period the facility may request a reduction in the frequency of testing. Compost produced from non-biosolids feedstock may test for pathogens and trace metals at half the frequency, but overall testing for all other characteristics must be as defined in the table above.

(c) All compost shall be tested for stability using one of the methods listed in TMECC 5.08, Respirometry. The stability results must be recorded.

(d) All compost shall be tested for the presence of pathogens using the methods in TMECC 7.00, Pathogens. Before the compost may be sold, given away or applied to the land, either:

1. The density of fecal coliform in the finished compost shall be less than 1,000 Most Probable Number (MPN) per gram of total solids (dry weight basis); or

2. The density of *Salmonella* sp. bacteria in the finished compost shall be less than three MPN per four grams of total solids (dry weight basis).

(e) All composts shall be analyzed for metals listed in 40 CFR, Section 503.13(b)(3), as amended using methods described in TMECC 4.00 Chemical Properties. The concentration of metals in compost to be sold, given away or applied to the land shall not exceed the pollutant concentration (milligrams per kilogram) limits for Exceptional Quality compost as defined in the following table contained in 40 CFR, Section 503.13, Table 3.

<u>METAL CONSTITUENT</u>	<u>TOTAL METAL CONCENTRATION (mg/kg)</u>
<u>Arsenic</u>	<u>41</u>
<u>Cadmium</u>	<u>39</u>
<u>Copper</u>	<u>1500</u>
<u>Lead</u>	<u>300</u>
<u>Mercury</u>	<u>17</u>
<u>Nickel</u>	<u>420</u>
<u>Selenium</u>	<u>100</u>
<u>Zinc</u>	<u>2800</u>

(f) Prior to being sold, given away or applied to the land, compost produced from feedstocks containing industrial by-products, sewage sludge or biosolids shall be analyzed for the metals listed in Table 1 of subparagraph (3)(e) of Rule 0400-12-01-.02 to verify that the compost does not exhibit the hazardous waste toxicity characteristic for those metals. This analysis shall be conducted on the first batch of compost produced and, thereafter, at the same frequency required by subparagraph (b) of this paragraph. Compost that exhibits the characteristic of hazardous waste shall be managed under the requirements of Chapter 0400-12-01.

(g) Compost which fails to meet the criteria of subparagraphs (d) and (e) of this paragraph must be managed as solid waste.

(4) ~~Classification of Compost—Compost shall be classified based on type of waste processed, product maturity, amount of foreign material, and the concentration of heavy metals.~~

(a) ~~Classification Criteria~~

1. ~~Type of waste processed~~

(i) ~~Landscaping waste only~~

(ii) ~~Landscaping waste and manure~~

(iii) ~~Solid waste (may include sewage, sludge, and other solid waste)~~

2. ~~Product maturity~~

(i) ~~Mature compost is a highly stabilized compost material that has been exposed to prolonged periods of decomposition. It will not reheat upon standing to greater than 20° C above ambient temperature. The material should be brown to black in color. This level of maturity is indicated by a reduction of organic matter of greater than 60 percent.~~

(ii) ~~Semi-mature compost is compost material that is at the mesophilic stage. It will reheat upon standing to greater than 20° C above ambient temperature. The material should be light to dark brown in color. This level of maturity is indicated by a reduction of organic matter of greater than 40 percent but less than or equal to 60 percent.~~

(iii) ~~Fresh compost is compostable material that has been through the thermophilic stage and has undergone partial decomposition. The material will reheat upon standing to greater than 20° C above ambient temperature. It has beneficial use, but proper care is needed as further decomposition and stabilization will occur. This level of maturity is indicated by a reduction of organic matter of greater than 20 percent but less than or equal to 40 percent.~~

3. ~~Compost shall be classified as either Type A Compost or Type B Compost according to its metal content characterization as shown in this part. Metal concentrations in finished compost shall not exceed the concentrations shown in Type B Compost below:~~

METAL CONSTITUENT	TYPE A COMPOST TOTAL METAL CONCENTRATION (PPM)	TYPE B COMPOST TOTAL METAL CONCENTRATION (PPM)
Arsenic	10	16
Cadmium	3	39
Chromium	210	1200
Cobalt	200	200
Copper	300	1500
Lead	400	250
Mercury	1.0	17
Molybdenum	10	18
Nickel	50	420
Selenium	3.0	36
Zinc	500	2800

4. ~~Foreign matter shall be expressed as a percent as provided at part (c)4 of this paragraph.~~

(b) ~~Labeling Requirements.~~

~~Compost shall be labeled in accordance with the classification criteria of subparagraph (a) of this paragraph. This label shall be prominently displayed on individually packaged material, or a written statement providing the classification criteria and certifying its accuracy will be deemed sufficient on all bulk sales. This label shall be of sufficient contrast to the packaging to be easily visible and shall be a bordered label with dimensions of three inches by five inches. The lettering shall be one quarter inch block characters.~~

(c) ~~Testing~~

1. Compost shall be sampled and analyzed as follows:

- (i) A composite sample of the compost produced at each composting facility shall be analyzed at intervals of every 20,000 tons of compost produced or every three months, whichever comes first, for:

Parameter	Unit	Method
Moisture	%	EPA 160.3
Total Nitrogen	% by dry weight	EPA 351 and 353
Total Phosphorus	% by dry weight	EPA 365
Total Potassium	% by dry weight	EPA 3050/7610
Reduction in Organic Matter	%	EPA 160.4
PH	Standard Units	EPA 9045

- (ii) In addition to subpart (i) of this part all compost utilizing the solid waste classification at subpart (a)1(iii) of this paragraph, shall be analyzed at intervals of every 20,000 tons of compost produced or every three months, whichever comes first, for:

Parameter	Unit	Method
All metals of part (a)3 of this paragraph.	mg/kg of dry Weight	SW-846 Method
Foreign Matter	%	See part 4 of this subparagraph**
Fecal Coliform	most probable number	SM 9221***
Volatile Residue	mg/l	See part 5 of this subparagraph**
PCB	part per million*	SW-846 Method

* (detection above 1 ppm, the Commissioner shall be immediately notified by the operator and the source identified)

** Methods for Chemical Analysis of Water and Wastes (EPA-600/4-79-020), 1983.

*** Standard Methods For the Examination of Waste and Wastewater, 21st Edition, 2005.

2. The Department may decrease or increase the parameters to be analyzed for or the frequency of analysis based on monitoring data, changes in the waste stream or processing, or the potential presence of toxic substances. Sample collection, preservation, and analysis shall assure valid and representative results pursuant to a Department-approved quality assurance plan.

3. Composite samples shall consist of at least three individual samples of equal volume taken from separate areas along the side of the pile of the compost produced. Each sampling point shall be at a depth of two feet into the pile and four feet from the outside edge of the pile.

4. Foreign matter content shall be determined by passing a dried, weighed sample of the compost product through a one-quarter inch or six millimeter screen. EPA Method 160.3 shall be used to dry the sample. The material remaining on the screen shall be visually inspected, and the foreign matter that can be clearly identified shall be separated and weighed. The weight of the separated foreign matter divided by the weight of the total sample multiplied by 100 shall be the percent dry weight of the foreign matter content.

5. The organic matter reduction is determined by measuring the volatile solids content using EPA method 160.4.

(d)(4) Reporting Records - Facility owner or operators shall record and maintain at the facility for three years the following information regarding their activities for each month of operation of the facility. Records shall be

available for inspection by Department personnel during normal business hours and shall be sent to the Department upon request to include:

- 4.(a) Analytical results on composting testing;
 - 2.(b) The quantity, type ~~[described at part (a)1 of this paragraph]~~ and quantity of feedstock and the source of waste feedstock received;
 - 3.(c) The quantity and type of waste ~~[described at part (a)1 of this paragraph]~~ processed into compost produced;
 - 4.(d) The quantity and type of compost Type A or Type B ~~[described at part (a)3 of this paragraph] produced; and 5. The quantity and type of compost Type A or Type B [described at part (a)3 of this paragraph removed for use or for disposal, and the market or permitted disposal facility. The operator must identify the market for compost removed for use. The operator must identify the permitted disposal facility for compost removed for disposal; and~~
 - (e) Temperatures measurements throughout the composting process demonstrating that PFRP has been met is applicable.
- (5) Design and Construction Plans
- (a) Master Plan - A master plan shall be provided that is drawn at a scale of not less than 1" = 400' with not more than 20 foot contour interval and which clearly depicts:
 1. The boundary of the proposed facility;
 2. The existing drainage pattern of all site runoff;
 3. Runoff monitoring stations;
 4. Primary access roads;
 5. Wells within one quarter mile of the site boundary;
 6. The location of all 100-year floodplain boundaries; and
 7. All residences within one quarter mile of the site boundary (If in an urban area residential properties may be delineated).
 - (b) Design Plans - Design plans shall be provided that are drawn at a suitable scale of not less than 1" = 50 feet and with contour intervals of not greater than five feet, which clearly depicts:
 1. All structures;
 2. Proposed waste processing areas;
 3. Proposed waste storage areas;
 4. All drainage appurtenances that control run-on/run-off and the direction of flow;
 5. The location of all existing and proposed utilities and roads (defining surface material); and
 6. The location of all leachate contact water collection/treatment structures, piping, storage appurtenances, and any other associated unit.
 - (c) Narrative Description of the Facility and Operation - A narrative description of the facility and operation shall be provided that defines all procedures and activities pertinent to the design and operation of the facility. This narrative shall include, but not necessarily be limited to:

1. A description of how the facility will achieve the compliance of all standards defined in paragraphs (2), (3), (4), and ~~(6)~~ (5) of this rule;
2. A description of the waste handling and processing equipment to be used;
3. A description of the management of run-on/runoff with design calculations of all appurtenances structures designed to meet the 24hr – 25 yr storm event;
4. A description of the management of the leachate contact water system and the disposition of the leachate contact water;
5. A description of the odor control measures; and
6. A description of the procedures for the final closure of the facility.

~~(6)~~ — Technological Standards / Best Available Technology

~~In order to assure that the public health and environment of the State of Tennessee is provided the optimum protection from unwarranted releases of metals, as restricted by part (4)(a)3 of this rule, these rules shall require that any facility permit incorporate the best available technology. This requirement is restricted to facility processing standards and shall not be interpreted to include source management of the waste stream. The applicant shall submit to the Department documentation of the most technologically advanced system that is currently in operation and is compatible with the proposed design criteria. Representative product analysis shall be provided in accordance with the testing requirements of subparagraph (4)(c) of this rule.~~

~~(e)~~(6) Annual Report

Owners and operators of facilities producing compost made from solid waste shall submit to the Department an annual report by March 1 of each year. The report and shall include at a minimum:

- 1.(a) The facility name, address and permit number;
- 2.(b) The reporting year with all quantities expressed in tons (sludge expressed in dry weight);
- 3.(c) The total quantity and type of waste ~~[described at part (a)1 of this paragraph]~~ feedstock received at the facility during the year covered by the report;
- 4.(d) The total quantity and type of waste ~~[described at part (a)1 of this paragraph]~~ processed at the compost facility of compost produced during the year covered by the report; and
5. ~~The total quantity and types of compost Type A or Type B [described at part (a)3 of this paragraph] produced during the year covered by the report; and~~
- 6.(e) The total quantity and types of compost Type A or Type B ~~[described at part (a)3 of this paragraph]~~ removed for use or for disposal, and the market(s) or permitted disposal facility(s). The operator must identify the market for compost removed for use. The operator must identify the permitted disposal facility for compost removed for disposal.

Authority: T.C.A. §§ 68-211-101 et seq., 68-211-701 et seq. and 4-5-201 et seq.

* If a roll-call vote was necessary, the vote by the Agency on these rulemaking hearing rules was as follows:

Board Member	Aye	No	Abstain	Absent	Signature (if required)
Marty Calloway (Petroleum Business with at least 15 Underground Storage Tanks)	X				
Stacey Cothran (Solid/Hazardous Waste Management Industry)	X				
Kenneth L. Donaldson (Municipal Government)				X	
Dr. George Hyfantis, Jr. (Institution of Higher Learning)	X				
Bhag Kanwar (Single Facility with less than 5 Underground Storage Tanks)	X				
Alan M. Leiserson Environmental Interests	X				
Jared L. Lynn (Manufacturing experienced with Solid/Hazardous Waste)	X				
David Martin (Working in a field related to Agriculture)	X				
Beverly Philpot (Manufacturing experienced with Underground Storage Tanks/Hazardous Materials)	X				
DeAnne Redman (Petroleum Management Business)	X				
Mayor A. Franklin Smith, III (County Government)				X	
Mark Williams (Small Generator of Solid/Hazardous Materials representing Automotive Interests)	X				

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Underground Storage Tanks and Solid Waste Disposal Control Board on 08/05/2015, and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 12/08/14

Rulemaking Hearing(s) Conducted on: (add more dates). 02/10/15

Date: August 5, 2015

Signature: _____

Name of Officer: Stacey Cothran

Title of Officer: Board Chair

Subscribed and sworn to before me on: _____

Notary Public Signature: _____

My commission expires on: _____

Rules of the Board of Underground Storage Tanks and Solid Waste Disposal Control Board
Chapter 0400-11-01 Solid Waste Processing and Disposal
Rule 0400-11-01-.01 Solid Waste Disposal Control System: General
Rule 0400-11-01-.02 Permitting of Solid Waste Storage, Processing, and Disposal Facilities
Rule 0400-11-01-.11 Requirements for Compost and Composting Facilities

All rulemaking hearing rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.

Herbert H. Slatery III
Attorney General and Reporter

Date

Department of State Use Only

Filed with the Department of State on: _____

Effective on: _____

Tre Hargett
Secretary of State

Public Hearing Comments

One copy of a document containing responses to comments made at the public hearing must accompany the filing pursuant to T.C.A. § 4-5-222. Agencies shall include only their responses to public hearing comments, which can be summarized. No letters of inquiry from parties questioning the rule will be accepted. When no comments are received at the public hearing, the agency need only draft a memorandum stating such and include it with the Rulemaking Hearing Rule filing. Minutes of the meeting will not be accepted. Transcripts are not acceptable.

1. Comment: The analysis and testing should be expanded to include such common constituents of mixed solid wastes and biosolids as antibiotics, hormone mimicking compounds, pesticides, and hydrocarbons. Such materials occur not infrequently in the afore-mentioned waste categories and would not be suitable for land application to home environments.

Response: The Department does not agree. Testing for antibiotics, hormone mimicking compounds, pesticides, hydrocarbons and several other constituents are not referenced in the US Composting Council's Model Compost Rule Template from which much of this rule revision was derived. However, the Department of Environment and Conservation (Department) has examined these issues and concluded that antibiotics degradation is sped up through the composting process while uptake of these compounds from food crops is limited. Similar conclusions were found for hormone mimicking compounds and pesticides. Some herbicides are persistent through the composting process but are not readily found in municipal solid waste and biosolids. Composting also neutralizes many of the hydrocarbons in contaminated feedstocks as the microorganisms are able to use limited amounts of the carbon as an energy source.

2. Comment: We find the proposed rule changes to conflict with both the Water Quality Control Act and the Tennessee's Right-To-Farm Act in T.C.A. §§ 43-26-101 et seq. and ask that the proposed amendments reflect those allowances as already established for agriculture in these statutes. Noise, dust, and odors from a compost operation on a farm cannot be separated from the rest of the farm operation. All farm operations have noise, dust, and odors. This language is ambiguous regarding farm operations and provides very little guidance for farmers or department staff regulating solid waste. We would ask the department to leave the current language in the rules which reflects that normal farming operations are not included in a solid waste regulation that is clearly designed for a different purpose.

Response: The Department agrees and has concluded that Rule 0400-11-01-.11(1)(b)3(ii)(III): "The composting facility is operated in such a manner that noise, dust, and odors do not constitute a nuisance or health hazard and does not cause or contribute to surface or ground water pollution" should be deleted to further clarify the Department's intent to exempt agricultural operations.

3. Comment: We are concerned about the language and potential interpretations regarding dust and odors which could constitute a nuisance. Specifically the threshold levels have been or will be outlined and given as guidance to TDEC employees who are called to do a site visit due to a complaint? When would an operation be determined to be categorized as operating or managing composting materials in such a way that it be considered a nuisance? What acceptable level of dust and or odors would constitute a nuisance?

Response: Dust control is universally addressed for all permitted composting operations in Rule 0400-11-01-.11(2)(a)2(iv). A description of odor control measures is required within the Narrative Description of the Facility and Operation during the permitting process, Rule 0400-11-01-.11(5)(c). If an odor or dust issue is reported to the Tennessee Department of Environment and Conservation (TDEC) through a complaint, the Department will conduct an inspection of the facility to determine if the complaint is valid. If the inspector determines the complaint has merit, the inspector will examine the facility to make sure it is operating within its permitted conditions and will also determine the reason for the odor or dust problem. Often odor problems will arise with improper composting operations that produce anaerobic rows or piles of wet materials that have insufficient bulking material. It is generally cost prohibitive to require composting facilities to track odors with scientific instruments, while the accuracy is complicated by changing wind direction and intensity. Dust management is not typically an issue associated with composting facilities except from those associated with wood grinding operations and from dry roads.

4. Comment: Rule 0400-11-01-.11(2)(a)1(x) Buffer Zone Standards for Siting New Facilities - All waste management areas shall be located so as to conform to the distance standards at subparagraph (3)(a) of Rule 0400-11-01-.04. The buffer standards for compost facilities are the same for Class I, II, III, and IV landfills, but compost facilities do not present the same degree of risk to human health and the environment as do solid waste landfills. Could buffer distances specific to compost facilities be considered? Could the waste management areas of compost facilities be more specifically defined as including such areas as raw feedstock receiving areas and the windrow area but not include stockpiles of mulch? There should be a tiered approach to set back requirements in alignment with the Tier 1, 2 and 3 type feedstocks. A tier 3 facility may require the current setback requirements, where as a Tier 2 and Tier 1 facility would be correspondingly less stringent.

Response: Rule 0400-11-01-.04 states that the buffers zones be measured from the fill area, where fill area is defined as the "area containing waste..." In a composting operation this area would be measured from the footprint of the composting rows or piles and feedstock staging areas. The buffer would not be measured from the location of the curing piles or the location of the finished compost product. The Department feels the buffer conditions are appropriate.

5. Comment: Current financial assurance requirements are based on landfill regulations. Requirements for financial assurance and facility closure in this scenario could be improved to be more commensurate with a compost facility operation versus a solid waste landfill. We propose that the type of facility operations dictates the time frame for continuous operation following default or departure of the facility operator. For example an open windrow system would require 4 months of operational capital to process raw materials into a stable product that can be land applied. This would eliminate the need to landfill a valuable material. The material could also be sold, used by the state on state property or given away to the public. This is a more cost effective and more environmentally friendly method than hauling material in various stages of processing to a landfill.

Response: Financial assurance for each permit will be calculated based on closure plans and cost estimates provided by the applicant. The Department cannot depend on locating and funding an operations team to work compost for four months in the event of a permit default. In the event of a permit default, the Department would look for the lowest cost solution most in line with the Department's goals of sound environmental stewardship. However, the financial assurance amount must take into consideration the worst case scenario where the material would need to be hauled offsite and properly disposed of.

6. Comment: A time line should be given in the curing process.

Response: The time it takes for compost to cure can be highly variable based on issues such as quantity, feedstock, location, and climatological factors, among others. The Department feels that mandating a timeline for the curing process is too prescriptive to encompass all types of composting operations and conditions.

7. Comment: The definition of windrow should be changed from piles to rows.

Response: The Department agrees and has changed the definition to include rows instead of piles.

8. Comment: Local fire departments should be trained on how to extinguish a fire at such facilities. Distance from the closest fire station to such a facility should be documented.

Response: The rule package carries over language from the existing rules stating that the facility shall acquire local firefighting services if available; this can be found in subpart (2)(a)2(ii) of Rule 0400-11-01-.11, "Fire Safety". This includes ensuring that the local firefighting services are aware of the nature of the ongoing operations at the permitted facility. Adding training requirements for fire departments is outside of TDEC's jurisdiction.

9. Comment: Certification should have expiration. One should have to keep up his or her earned credits.

Response: At this time, we feel the number of composting certification opportunities are limited enough that a strict certification program is not feasible for all operations. Therefore, Rule 0400-11-01-.11(2)(a)2(vi) only requires operators to go through a training program.

10. Comment: Nothing states that managers are required to show documentation of non-finished compost. Compost facility managers should have to keep records of their temps to prove PFRP has been completed.

Response: The Department agrees and has added this requirement to subparagraph (4)(e) of Rule 0400-11-01-.11, "Temperatures measurements throughout the composting process demonstrating that PFRP has been met is applicable."

11. Comment: In regard to tier three operations the rules should distinguish between Class A biosolid and proper application verses Class B biosolid and proper application.

Response: As long as the finished product contains pathogen and metal concentration levels that are below the listed maximums then the classification of the initial material has negligible bearing. Generally Class A biosolids are a designation for dewatered and treated sewage sludge that meets U.S. EPA guidelines for land application with no restrictions, so these are rarely composted. The Department consciously placed any operation processing biosolids into the Tier Three category with stricter requirements due to the diverse nature of the feedstock.

12. Comment: In regard to tier three operations and sewage sludge; what percentage of this feedstock is acceptable for the composting purposes? To what application will this product be used for?

Response: Feedstock ratios are individually determined by each permitted facility. The Department is concerned with the composition of the finished product, which must be below the listed maximums for metals and pathogens found in the testing requirements under Rule 0400-11-01-.11(3). If the finished product comes in under the maximum concentrations, then there are no restrictions for the initial feedstock percentages. Regarding application of the product, if the finished compost produced from sludge feedstock components is stable and fully matured; meaning that microbial activity and decay are complete, and if the metal and pathogen levels are in compliance with Rule 0400-11-01-.11(3), then there is no specific restriction on compost use/application provided it does not violate any other environmental laws or regulations.

13. Comment: We are very concerned that encouraging composting of non-organic waste including televisions, radios, and e-waste will compromise the quality and reputation of compost from the State of Tennessee. This has already happened in Sevierville which is a massive composting facility which is basically a composting landfill. The presence of glass severely compromises the quality and marketability of the compost.

Response: The Sevierville operation is a Tier III composting facility, but the vast majority of compost operations will not qualify for Tier III status. Operations that both qualify and choose to compost waste streams that have the potential for contamination from either e-scrap or glass must specifically outline, in their permit conditions, how they will manage that waste so that it does not end up in the finished product or contaminating the finished product.

14. Comment: We support exclusive use of decomposing organic material in compost produced in our state. Industrial by-products and "Mixed solid waste" should be avoided. Under current policy, there is very little "source separated organics" in Tennessee.

Response: The Department agrees that the best composting operations will use only organic feedstocks with nutrient ratios that will produce usable products without contaminants and pathogens. Composting waste streams, such as mixed solid waste, that contain organics can offer an environmentally sensible approach to reducing materials that contribute to landfill leachate generation.

15. Comment: Biosolids are allowed in Tier 3. We question use of chemically laden human waste.

Response: While Class A biosolids require no further treatment before land application, composting is a

viable method to reduce pathogens in Class B biosolids. According to the EPA, the use of biosolids in the production of crops for human consumption when practiced in accordance with federal guidelines presents negligible risks to the consumer.

16. Comment: Tier 1 has temperature requirements, Tier 2 and 3 do not. Should they?

Response: "Facility Standards", Rule 0400-11-01-.11(2) states that Tier Two and Tier Three composting facilities have all the requirements of a Tier One composting facility, including all Tier One temperature conditions.

17. Comment: Tier 1 has no record keeping requirements but should since we are require such items as proper temperature.

Response: Tier 1 record requirements are outlined in Rule 0400-11-01-.11(4) "Records".

18. Comment: Temperatures should be stated in Fahrenheit, not Celsius to avoid confusion.

Response: The Department agrees and Fahrenheit conversions have been included.

19. Comment: Definition of biosolids is less stringent than definition in Biosolids Rule 0400-40-15-.01.

Response: The Department agrees and has adopted the definition of Biosolids consistent with Rule 0400-40-15-.01(8).

20. Comment: In Rule 0400-11-01-.11(1)(b)1, the last sentence appears to allow no fee for facilities that change their operation in the future.

Response: The Department agrees that this should only apply to current operations. The phrase "facilities which already have permit-by-rule" has been added to clarify this point.

21. Comment: In Rule 0400-11-01-.11(1)(b)1, change cross reference to paragraph (1) of Rule 0400-11-01-.02.

Response: The Department feels that cross referencing paragraph (3) is more applicable to Rule 0400-11-01-.11(1)(b)1 since it relates to permit application requirements.

22. Comment: In Rules 0400-11-01-.11(1)(b)4 and 5, add "only" in first sentence of both.

Response : The Department agrees that this clarification is appropriate and has added the word "only" to the first sentence in both part 4 and part 5 of Rule 0400-11-01-(1)(b)..

23. Comment: In Rule 0400-11-01-.11(1)(b)6, the use of the terms lower level of risk and higher level of risk seems contradictory.

Response: The Department agrees and has modified the language by removing the term "higher level of risk". In addition, part 6 was restructured to better explain what types of materials may be processed at a facility.

24. Comment: In Rule 0400-11-01-.11(2)(a)2(v), change cross reference to paragraph (1) of Rule 0400-11-01-.02.

Response: The Department agrees and has changed the cross reference.

25. Comment: In rule 0400-11-01-.11(2)(a)2(v), change second sentence to read: "Such financial assurance shall be in an amount determined by the Commissioner to be adequate to insure 30 days operation and proper closure of the facility."

Response: The Department agrees with this clarification and has modified subpart (2)(a)2(v) of Rule 0400-11-01-.11 to read, "Such financial assurance shall be in an amount determined by the Commissioner to be adequate to insure 30 days operation and proper closure of the facility".

26. Comment: In Rule 0400-11-01-.11(2)(a)2(vii), add requirement to submit CFOP to TDEC 30 days prior to making change in feedstock.

Response: The Department agrees that including language requiring the submittal of a Composting Facility Operations Plan will make it clear that changes in operation or feedstock must be evaluated by the Department and has modified the subpart to reflect this. However, a timeframe was not included to allow for some latitude in operations.

27. Comment: In Rule 0400-11-01-.11(2)(a)2(xv), should closure process include release of financial assistance?

Response: The process for release of financial assurance is found in subparagraph (3)(i) of Rule 0400-11-01-.03 "Maintenance/Release of Financial Assurance, and does not need to be repeated here.

28. Comment: In Rule 0400-11-01-.11(2)(b)2(ii), require all composting at Type 1 facilities to be conducted on the all-weather pad. The language now states, "All composting at Tier One composting facilities shall be conducted on an all-weather composting pad".

Response: The Department agrees and has modified the language to clarify the use of an all- weather pad for Tier I facilities.

29. Comment: In Rule 0400-11-01-.11(2)(b)2(ii)(I), clarify that item (III) is an exception to item (I) by starting in item (I) with, "Except as provided in item (III),..."

Response: The Department agrees and has modified item (I) to state: "Except as provided in item (III) of this subpart".

30. Comment: In Rule 0400-11-01-.11(2)(d)3(i), cite Chapter 0400-40-15 rather than federal rules on biosolids.

Response: The Department agrees that the recent State rules are more appropriate to cite and has modified the language to reflect this recommendation.

31. Comment: In Rule 0400-11-01-.11(2)(d)3(i), since there are applicable requirements in the biosolids rules that concern more than "sludge management", this sentence should be changed to, "Facilities that compost biosolids or sewage sludge shall comply with all applicable regulations regarding biosolids and sewage sludge in Rule Chapter 0400-40-15."

Response: The Department agrees and has modified the language to reflect this recommendation.

32. Comment: In Rule 0400-11-01-.11(1)(b)4, change "clean wood" to "woody material" to match definitions

Response: The Department agrees and has replaced "clean wood" with "woody material".

33. Comment: In Rule 0400-11-01-.11(2)(b)2(ii)(II), clarify the "the first 5 feet" by adding "of the surface"

Response: The Department agrees and has modified the language to "the first 5 feet of the surface".

Regulatory Flexibility Addendum

Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rule making process as described in T.C.A. § 4-5-202(a)(3) and T.C.A. § 4-5-202(a), all agencies shall conduct a review of whether a proposed rule or rule affects small businesses.

This proposed rule revision is based on the Model Compost Rule Template as set forth by the U.S. Composting Council, 5400 Grosvenor Lane, Bethesda, MD 20814. The template is a compilation of composting information submitted by industry and regulatory leaders across the nation, including the U.S. EPA, who participated in the development of the model rule template. The revision is based on a three-tier facility classification with specific feedstocks that are used at the different tier levels. This revision provides better composting practices and composting opportunities for our State on a local level.

- (1) The type or types of small business and an identification and estimate of the number of small businesses subject to the proposed rule that would bear the cost of, or directly benefit from the proposed rule.

Small business which compost large quantities of materials from outside sources as part of their operations will be required to obtain a permit. There are currently five or fewer of these businesses identified.

- (2) The projected reporting, recordkeeping, and other administrative costs required for compliance with the proposed rule, including the type of professional skills necessary for preparation of the report or record.

Permitted facilities under these rule changes will have to maintain a Composting Facility Operations Plan in addition to the initial permit application. The facility will also be required to document such items as feedstocks and windrow temperatures. The documents can be maintained without specialty professional skill by a qualified composting facility manager.

- (3) A statement of the probable effect on impacted small businesses and consumers.

The proposed rules have minimal effect on small business. Some small businesses will qualify for exemptions. Small business operations that require permits under these rule changes would require a permit under existing rules. Fee structures have not changed.

- (4) A description of any less burdensome, less intrusive or less costly alternative methods of achieving the purpose and objectives of the proposed rule that may exist, and to what extent the alternative means might be less burdensome to small business.

There are no less burdensome, less intrusive or less costly alternatives to achieving the purpose and objectives of this proposed rule.

- (5) A comparison of the proposed rule with any federal or state counterparts.

These rules are based on the Model Compost Rule Template as set forth by the U.S. Composting Council. Currently three other states; Maryland, Georgia and South Carolina have adopted rules based on the template. Other states are expected to follow in the future.

- (6) Analysis of the effect of the possible exemption of small businesses from all or any part of the requirements contained in the proposed rule.

Agricultural small businesses are exempt under most conditions. Small businesses that compost their own waste streams on site will often be exempted. Small businesses that compost 400 cubic yards of type one feedstock, or 50 cubic yards of type two feedstock openly, or 100 cubic yards in-vessel will be exempted.

Impact on Local Governments

Pursuant to T.C.A. §§ 4-5-220 and 4-5-228 "any rule proposed to be promulgated shall state in a simple declarative sentence, without additional comments on the merits of the policy of the rules or regulation, whether the rule or regulation may have a projected impact on local governments." (See Public Chapter Number 1070 (<http://state.tn.us/sos/acts/106/pub/pc1070.pdf>) of the 2010 Session of the General Assembly)

The Department anticipates that there will be a positive impact on local governments.

* If a roll-call vote was necessary, the vote by the Agency on these rulemaking hearing rules was as follows:

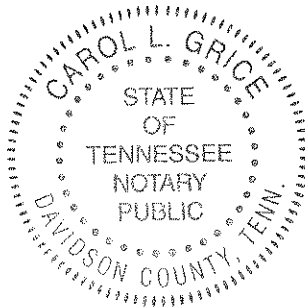
Board Member	Aye	No	Abstain	Absent	Signature (if required)
Marty Calloway (Petroleum Business with at least 15 Underground Storage Tanks)	X				
Stacey Cothran (Solid/Hazardous Waste Management Industry)	X				
Kenneth L. Donaldson (Municipal Government)				X	
Dr. George Hyfantis, Jr. (Institution of Higher Learning)	X				
Bhag Kanwar (Single Facility with less than 5 Underground Storage Tanks)	X				
Alan M. Leiserson Environmental Interests	X				
Jared L. Lynn (Manufacturing experienced with Solid/Hazardous Waste)	X				
David Martin (Working in a field related to Agriculture)	X				
Beverly Philpot (Manufacturing experienced with Underground Storage Tanks/Hazardous Materials)	X				
DeAnne Redman (Petroleum Management Business)	X				
Mayor A. Franklin Smith, III (County Government)				X	
Mark Williams (Small Generator of Solid/Hazardous Materials representing Automotive Interests)	X				

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Underground Storage Tanks and Solid Waste Disposal Control Board on 08/05/2015, and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 12/08/14

Rulemaking Hearing(s) Conducted on: (add more dates). 02/10/15



Date: August 5, 2015

Signature: Stacey Cothran

Name of Officer: Stacey Cothran

Title of Officer: Board Chair

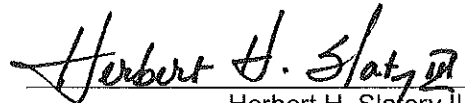
Subscribed and sworn to before me on: August 5, 2015

Notary Public Signature: Carol L. Grice


My commission expires on: June 21, 2016

Rules of the Board of Underground Storage Tanks and Solid Waste Disposal Control Board
Chapter 0400-11-01 Solid Waste Processing and Disposal
Rule 0400-11-01-.01 Solid Waste Disposal Control System: General
Rule 0400-11-01-.02 Permitting of Solid Waste Storage, Processing, and Disposal Facilities
Rule 0400-11-01-.11 Requirements for Compost and Composting Facilities

All rulemaking hearing rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.


Herbert H. Slatery III
Attorney General and Reporter
4/6/2016
Date

Department of State Use Only

Filed with the Department of State on: 4/8/16
Effective on: 7/7/16

Tre Hargett
Secretary of State

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G.O.C. STAFF RULE ABSTRACT

AGENCY: Air Pollution Control Board

SUBJECT: Volatile Organic Compounds

STATUTORY AUTHORITY: Tennessee Code Annotated, Section 68-201-105

EFFECTIVE DATES: July 14, 2016 through June 30, 2017

FISCAL IMPACT: None

STAFF RULE ABSTRACT: According to the Board, the rulemaking hearing rule requires gasoline dispensing facilities in Davidson, Rutherford, Sumner, Williamson and Wilson Counties to remove Stage II Vapor Recovery Systems (VRS). Specifically, the proposed rule amendment requires the removal of all Stage II VRS no later than three years following July 14, 2016. The rule also updates Tennessee's Stage I vapor recovery requirements by adopting the equivalent Federal regulations by reference.

Public Hearing Comments

One copy of a document containing responses to comments made at the public hearing must accompany the filing pursuant to T.C.A. § 4-5-222. Agencies shall include only their responses to public hearing comments, which can be summarized. No letters of inquiry from parties questioning the rule will be accepted. When no comments are received at the public hearing, the agency need only draft a memorandum stating such and include it with the Rulemaking Hearing Rule filing. Minutes of the meeting will not be accepted. Transcripts are not acceptable.

Comment: A commenter was concerned about the proposed compliance period beginning January 1, 2016 and the unlikelihood of the amendment become effective on or before that date.

Response: The Board agrees with the concerns of the commenter and has removed the specific date to begin the three year compliance period and replaced it with the phrase "on the effective date of the rule."

Comment: A commenter asked if the amendment will subject any new locations to Stage I requirements.

Response: This amendment will not subject any new counties or locations to Stage I vapor recovery requirements. Currently, gasoline dispensing facilities (GDF) located in Anderson, Blount, Carter, Cheatham, Davidson, Dickson, Fayette, Hamilton, Hawkins, Haywood, Jefferson, Knox, Loudon, Marion, Meigs, Montgomery, Putnam, Robertson, Rutherford, Sevier, Shelby, Sullivan, Sumner, Tipton, Unicoi, Union, Washington, Williamson, or Wilson Counties with a monthly throughput of 10,000 gallons or more are required to comply with Tennessee's Stage I vapor recovery requirements. GDF located in these counties will remain subject to the federal equivalent of Stage I vapor recovery (40 CFR §63.11118) if their monthly throughput is 10,000 gallons or more. The lower applicability in these counties is necessary to comply with the anti-backsliding requirements of § 110(l) of the Clean Air Act. However, the lower threshold does not affect any facilities that were not already subject to the existing State requirement.

For all other counties in Tennessee, 40 CFR 63 Subpart CCCCCC subjects GDF to the requirements of 40 CFR §63.11118 at a monthly throughput of 100,000 gallons or more. This applicability will not change.

Comment: As a part of the new rules requiring upgraded equipment or decommissioning of equipment, a commenter asked if there will be any permitting or fees associated with decommissioning of Stage II vapor recovery.

Response: There will be no permitting or fees associated with decommissioning of Stage II systems.

Comment: In regards to subparagraph (1)(b) of Rule 1200-03-18-.24, a commenter asked if there is a current requirement in the Tennessee rule for length of submerged fill. Does the department have an estimate of number of older stations that will not meet the new requirements and will it require new submerged fill? Does the department have a cost estimate for new submerged fill, including all installation costs?

Response: The current version of Tennessee's Stage I vapor recovery requirements, including submerged fill, were adopted in 2006, and gasoline dispensing facilities were required to comply with federal submerged fill requirements (40 CFR 63 Subpart CCCCCC) in 2011. Because all facilities in Tennessee have been subject to state or federal requirements for at least five years, there should be no facilities that do not meet the requirements of this rule.

Comment: In regards to subparagraph (1)(c) of Rule 1200-03-18-.24, a commenters asked what the current requirement is for stations with a monthly throughput of 10,000 or more. Does the department have an estimate of how many stations do not meet the proposed standard and what the cost per station upgrade will be?

Response: Stations located in the listed counties (see footnote 1) with a monthly throughput of 10,000 gallons or more are required to comply with Tennessee's Stage I vapor recovery requirements.

The department does not expect any stations located in the listed counties to need upgrades if they are already in compliance with the existing Stage I vapor recovery requirements.

Comment: Regarding Stage II, a commenter asked if the state will allow partial decommissioning, such as allowing certain parts such as existing hoses, nozzles, breakaway valves and swivels (hanging hardware) and vapor pumps to be left in place.

Response: GDFs would be required to decommission and remove the Stage II vapor recovery system in accordance with Petroleum Equipment Institute (PEI) guidance, "Recommended Practices for Installation and Testing of Vapor Recovery Systems at Vehicle Fueling Sites, PEI/RP300-09" for removal, notification, and certification. In general, the PEI guidance allows piping to be abandoned in place but requires replacement of hanging hardware. Compliance with the PEI guidance will assure that decommissioning is performed by competent personnel, follows all safety procedures, and removes all components in a manner that prevents the release of gasoline vapors to the atmosphere.

Comment: As part of the new rules requiring upgraded equipment or decommissioning of equipment, a commenter asked if there will be a permit process involved which will be established later by the Technical Secretary.

Response: There will not be a permit process for upgrading/decommissioning of equipment.

Comment: As part of the new rules requiring upgraded equipment or decommissioning of equipment, a commenter asked if there will be any fees associated or anticipated.

Response: There will not be any fees associated with upgrading/decommissioning of equipment.

Comment: A commenter asked to be provided with a chart of differences between this proposed rule and the rules of the counties that have their own programs, i.e., Davidson, Hamilton, Knox and Shelby.

Response: A copy of Tennessee's "110(I)" demonstration was provided to the commenter as requested. The Department is required to submit the "110(I)" demonstration to EPA to show that the revised state requirements are at least as stringent as the federal requirements. The "110(I)" demonstration includes a comparison of state and federal requirements.

Knox and Shelby Counties have directly adopted the state regulation, and there is no difference between those two counties and the existing state requirements. Davidson County has some requirements for GDFs that are more stringent. Hamilton County's rules are worded differently, and a direct comparison is more difficult.

Comment: A commenter was concerned about the cost to businesses.

Response: An estimated cost to businesses has been prepared. Over time, the cost of decommissioning an existing Stage II system (varies, but up to \$10,000) is offset by reduced maintenance and testing costs (~\$3,000 per year).

Stage II Vapor Recovery Decommissioning Cost Estimates April 24, 2015

Activity	Estimated Cost	Source
Estimated decommissioning cost for one single-hose dispenser	~\$800	TDEC estimate based on Wisconsin vendor pricing (January 2013)
Estimated decommissioning cost for one multi-hose dispenser (3 hoses)	~\$1,300	TDEC estimate based on Wisconsin vendor pricing (January 2013)
Estimated decommissioning cost for a facility with six multi-hose dispensers (3 hoses each)	~\$5,500	TDEC estimate based on Wisconsin vendor pricing (January 2013)

Stage II Vapor Recovery Decommissioning Cost Estimates
April 24, 2015

Activity	Estimated Cost	Source
Decommissioning cost estimated by Georgia EPD	\$1,500 - \$2,500	Georgia EPD
Decommissioning cost for example site with 6 single-hose, multiproduct dispensers with vacuum assist system and four tanks: 2 manifolded regular unleaded, 1 premium, and 1 diesel	\$4,600 (\$1,132 labor, \$468 testing, \$3,000 new hardware)	Georgia Tank and Environmental Contractors Association
Estimated decommissioning cost for one single-hose dispenser	~\$600	TN Fuel and Convenience Store Association, Tri-Star Energy
Estimated decommissioning cost for one multi-hose dispenser	~\$1,650	TN Fuel and Convenience Store Association, Tri-Star Energy
Estimated decommissioning cost for a facility with six multi-hose dispensers	~\$10,000	TN Fuel and Convenience Store Association, Tri-Star Energy

Range of decommissioning costs:

One single-hose dispenser: \$600 - \$800

One multi-hose dispenser: \$1,300 - \$1,650

Six multi-hose dispensers: \$4,600 - \$10,000

Cost Estimates for Retaining Stage II Vapor Recovery
April 24, 2015

Activity	Estimated Cost	Source
Cost of installing Stage II vapor recovery equipment at new GDFs (includes USTs, associated piping, pumps and ancillary equipment)	\$20,000 to \$60,000	EPA ¹
Cost of installing Stage II vapor recovery equipment at new GDFs (includes USTs, associated piping, pumps and ancillary equipment)	\$25,000	Georgia EPD ²
Annual cost to maintain existing Stage II systems (average size GDF)	\$3,000 per year	EPA
Maintenance and testing of Stage II systems	~\$3,000 Annually	Georgia EPD stakeholder meeting, April 2013
Cost of additional Stage II dispensers at an existing facility	~\$3,200	Georgia EPD stakeholder meeting, April 2013
Cost Stage II systems at a new facility	~\$32,000	Georgia EPD stakeholder meeting, April 2013

¹ U. S. EPA, *Guidance on Removing Stage II Gasoline Vapor Control Programs from State Implementation Plans and Assessing Comparable Measures*. August 7, 2012.

² Georgia Department of Natural Resources, Environmental Protection Division, Air Protection Branch, *Draft Revision to the Georgia State Implementation Plan for the Removal of Georgia Rule 391-3-1-.02(zz) Gasoline Dispensing Facilities – Stage II*. September 25, 2014.

Regulatory Flexibility Addendum

Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rule making process as described in T.C.A. § 4-5-202(a)(3) and T.C.A. § 4-5-202(a), all agencies shall conduct a review of whether a proposed rule or rule affects small businesses.

- (1) The type or types of small business and an identification and estimate of the number of small businesses subject to the proposed rule that would bear the cost of, or directly benefit from the proposed rule.

The small businesses that would be affected by the proposed rule are primarily gasoline distributors and convenience store owners. Other types include auto dealerships, contractors, farms, hospitals, and truck/transportation businesses. The approximate number of small businesses that are affected by the changes to Stage II rules and potentially subject to decommissioning is 310. The approximate number of all businesses subject to the Stage II rules and potentially subject to decommissioning is 555. Facilities subject to Stage I rules that should already be in compliance are as follows: 2384 small businesses and 3223 total businesses (does not include government entities).

- (2) The projected reporting, recordkeeping, and other administrative costs required for compliance with the proposed rule, including the type of professional skills necessary for preparation of the report or record.

In regards to Stage I, facilities required to have Stage I vapor controls should already be in compliance and there should be no additional costs to businesses.

In regards to Stage II, the projected reporting, recordkeeping, and administrative costs required for compliance with Stage II decommissioning would be minimal and a one-time cost. Potential costs could be associated with notification of decommissioning prior to decommissioning and submission of certification of decommissioning. The submission of certification of decommissioning may require the signature or copy of the decommissioning report by the professional that completes the decommissioning according to the Petroleum Equipment Institute (PEI) guidance, "Recommended Practices for Installation and Testing of Vapor Recovery Systems at Vehicle Fueling Sites, PEI/RP300-09". These costs would be equivalent to notification and reporting of performance tests, a routine type of report for businesses required to conduct performance testing.

- (3) A statement of the probable effect on impacted small businesses and consumers.

The probable effect on impacted small businesses and consumers is some downtime as the decommissioning process is conducted. The decommissioning process is not expected to be a lengthy procedure except in the event of a large number of dispensers needing to be decommissioned. Downtime is likely to be measured in hours or a few days at most. There would be an up-front cost to impacted businesses to conduct the decommissioning that would be offset by deferred maintenance costs to maintain the Stage II system. Facilities subject to only Stage I should already be in compliance and there should be no further impact.

- (4) A description of any less burdensome, less intrusive or less costly alternative methods of achieving the purpose and objectives of the proposed rule that may exist, and to what extent the alternative means might be less burdensome to small business.

Not requiring GDFs with an existing Stage II vapor recovery system to decommission and remove the system would be less burdensome relative to the upfront costs and the necessary downtime while the decommissioning process is conducted. However, the upfront costs would be offset by deferred costs to maintain the Stage II system. Additionally, the decommissioning process is not expected to be a lengthy procedure except in the event of a large number of dispensers needing to be decommissioned.

Relative to the technique for decommissioning Stage II systems, there are no known less burdensome, less intrusive, or less costly alternative methods. This is the accepted method for decommissioning Stage II systems as indicated by EPA and PEI guidance.

- (5) A comparison of the proposed rule with any federal or state counterparts.

The changes proposed will incorporate by reference applicable federal rule but will retain the lower applicability threshold in specified counties.

- (6) Analysis of the effect of the possible exemption of small businesses from all or any part of the requirements contained in the proposed rule.

No exemptions are proposed for small businesses from Stage II decommissioning. A time line of 3 years to achieve compliance is given and the cost savings to businesses in deferred maintenance once Stage II is decommissioned will offset the up-front costs to decommission Stage II systems.

Impact on Local Governments

Pursuant to T.C.A. §§ 4-5-220 and 4-5-228 "any rule proposed to be promulgated shall state in a simple declarative sentence, without additional comments on the merits of the policy of the rules or regulation, whether the rule or regulation may have a projected impact on local governments." (See Public Chapter Number 1070 (<http://state.tn.us/sos/acts/106/pub/pc1070.pdf>) of the 2010 Session of the General Assembly)

The Department believes that proposed amendments will have a projected financial impact on local governments.

Additional Information Required by Joint Government Operations Committee

All agencies, upon filing a rule, must also submit the following pursuant to T.C.A. § 4-5-226(i)(1).

- (A) A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

This rulemaking is promulgated under the authority of Tenn. Code Ann. § 68-201-101 et seq. The proposed rule amendment would require gasoline dispensing facilities in Davidson, Rutherford, Sumner, Williamson and Wilson Counties to remove Stage II Vapor Recovery Systems (VRS). Specifically, the proposed rule amendment requires the removal of all Stage II VRS no later than three (3) years following the effective date of this rule amendment. The amended rule also updates Tennessee's Stage I vapor recovery requirements by adopting the equivalent Federal regulations by reference.

- (B) A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

No Federal or State law mandates either change (Stage I or Stage II). Tennessee's Stage I vapor recovery requirements are being removed from the regulations because the U. S. EPA has adopted an equivalent set of regulations. Tennessee is adopting the federal requirements to reduce the administrative burden to the regulated community.

In regards to Stage II, it has been determined that if Stage II controls are not removed, emissions of volatile organic compounds would increase over time. The determination was prompted by a 2012 Federal Register notice (77 FR 28772), in which the U.S. EPA determined that onboard vapor recovery (ORVR) technology is in widespread use throughout the motor vehicle fleet for purposes of controlling motor vehicle refueling emissions. Widespread use of ORVR renders Stage II controls obsolete, because the pollutants that were controlled by Stage II vapor recovery can be captured inside the motor vehicle. Furthermore, the use of both Stage II and ORVR together reduces the effect of both technologies. Therefore, if Stage II controls are not removed, emissions of volatile organic compounds would increase over time.

This rulemaking is being adopted under the authority of T.C.A. §§ 68-201-101 et seq.

- (C) Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

This amendment affects gasoline dispensing facilities in Tennessee.

- (D) Identification of any opinions of the attorney general and reporter or any judicial ruling that directly relates to the rule;

The Air Pollution Control Board is not aware of any opinions that directly relate to the rulemaking.

- (E) An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency's annual budget or five hundred thousand dollars (\$500,000), whichever is less;

No change in state and local government revenues and expenditures is expected to result from this amendment.

- (F) Identification of the appropriate agency representative or representatives, possessing substantial knowledge and understanding of the rule;

Travis Blake
Division of Air Pollution Control
William R. Snodgrass Tennessee Tower
312 Rosa L. Parks Avenue, 15th Floor
Nashville, Tennessee 37243

travis.blake@tn.gov

- (G) Identification of the appropriate agency representative or representatives who will explain the rule at a scheduled meeting of the committees;

Emily Urban
Assistant General Counsel
Office of General Counsel

- (H) Office address, telephone number, and email address of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

Office of General Counsel
Tennessee Department of Environment and Conservation
William R. Snodgrass Tennessee Tower
312 Rosa L. Parks Avenue, 2nd Floor
Nashville, Tennessee 37243
(615) 532-8685
Emily.Urban@tn.gov

- (I) Any additional information relevant to the rule proposed for continuation that the committee requests.

The Tennessee Air Pollution Control Board is not aware of any requests.

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For Department of State Use Only

Sequence Number: 04-11-16
Rule ID(s): 6180
File Date: 4/15/16
Effective Date: 7/14/16

Rulemaking Hearing Rule(s) Filing Form

Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing (Tenn. Code Ann. § 4-5-205).

Pursuant to Tenn. Code Ann. § 4-5-229, any new fee or fee increase promulgated by state agency rule shall take effect on July 1, following the expiration of the ninety (90) day period as provided in § 4-5-207. This section shall not apply to rules that implement new fees or fee increases that are promulgated as emergency rules pursuant to § 4-5-208(a) and to subsequent rules that make permanent such emergency rules, as amended during the rulemaking process. In addition, this section shall not apply to state agencies that did not, during the preceding two (2) fiscal years, collect fees in an amount sufficient to pay the cost of operating the board, commission or entity in accordance with § 4-29-121(b).

Agency/Board/Commission:	Environment and Conservation
Division:	Air Pollution Control
Contact Person:	Travis Blake
Address:	William R. Snodgrass Tennessee Tower 312 Rosa L. Parks Avenue, 15th Floor Nashville, TN
Zip:	37243
Phone:	(615) 532-0617
Email:	travis.blake@tn.gov

Revision Type (check all that apply):

☒ Amendment
☐ New
☐ Repeal

Rule(s) Revised (ALL chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please enter only **ONE Rule Number/Rule Title per row)**

Chapter Number	Chapter Title
1200-03-18	Volatile Organic Compounds
Rule Number	Rule Title
1200-03-18-.24	Gasoline Dispensing Facilities – Stage I and Stage II Vapor Recovery

Chapter 1200-03-18
Volatile Organic Compounds

Amendment

1200-03-18-.24 Gasoline Dispensing Facilities - Stage I and Stage II Vapor Recovery

- (1) ~~Applicability and exemptions~~ The provisions of 40 CFR 63 Subpart CCCCCC (National Emission Standards for Hazardous Air Pollutants for Source Category: Gasoline Dispensing Facilities) are hereby adopted by reference as published in the July 1, 2014 edition of the Code of Federal Regulations (CFR), except as provided in subparagraphs (a) through (d) of this paragraph.
- (a) Applicability of this rule is as follows: Any reference contained in 40 CFR 63 Subpart CCCCCC to the:
1. Administrator shall instead be a reference to the Technical Secretary;
 2. Applicable EPA regional office for the State of Tennessee shall instead be a reference to the EPA Region IV office; and
 3. Delegated State authority shall instead be a reference to the Technical Secretary.
- ~~4.(b)~~ This rule applies to any of the following If your gasoline dispensing facility (GDF) has a monthly throughput of less than 10,000 gallons of gasoline, and is located in Anderson, Blount, Carter, Cheatham, Davidson, Dickson, Fayette, Hamilton, Hawkins, Haywood, Jefferson, Knox, Loudon, Marion, Meigs, Montgomery, Putnam, Robertson, Rutherford, Sevier, Shelby, Sullivan, Sumner, Tipton, Unicoi, Union, Washington, Williamson, or Wilson County: Counties, you must also comply with the requirements in 40 CFR § 63.1117(b) and (c).
- ~~(i) To any gasoline dispensing facility and the appurtenant equipment necessary to the gasoline dispensing facility; and~~
 - ~~(ii) To any gasoline tank truck that transfers gasoline to storage vessels at such facilities.~~
- ~~2. Any gasoline dispensing facility located in one of the counties specified in Part (1)(a)1 of this rule that exceeds the applicability threshold specified in Parts (1)(b)2 or (1)(b)3 of this rule shall be subject to all of the respective provisions of this rule for facilities exceeding the applicability threshold and shall remain subject to these provisions even if its throughput later falls below the threshold. The owner or operator shall inform the Technical Secretary within 30 days following the exceedance, as specified in Part (5)(a)3 of this rule.~~
- ~~(b) Exemptions from this rule are as follows:~~
- ~~1. With respect to requirements concerning transfers from gasoline tank trucks to gasoline storage vessels at gasoline dispensing facilities, the following are subject only to Part (3)(a)1 of this rule:~~
 - ~~(i) Any transfer made to a gasoline dispensing facility storage tank that is equipped with a floating roof or an approved equivalent, this approval being a revision to the State Implementation Plan;~~
 - ~~(ii) Any stationary gasoline storage container with a capacity that is less than 2,080 liters (L) (550 gallons [gal]) that is used exclusively for the fueling of implements of husbandry;~~

- (iii) ~~Any stationary storage tank with a capacity of less than 7,600 L (2,000 gal) that was constructed prior to January 1, 1979; and~~
 - (iv) ~~Any stationary storage tank with a capacity of less than 950 L (250 gal) that was constructed after December 31, 1978.~~
- 2. ~~Any gasoline dispensing facility which dispenses less than 10,000 gallons of gasoline per month is subject only to the provisions of Parts (3)(a)1 and (5)(b)2 of this rule.~~
- 3. ~~The requirements of Subparagraph (3)(c) of this rule do not apply to any gasoline dispensing facility which satisfies any of the following:~~
 - (i) ~~Is in a county other than Davidson, Rutherford, Sumner, Williamson, or Wilson County;~~
 - (ii) ~~Dispenses less than 10,000 gallons of gasoline per month;~~
 - (iii) ~~Dispenses less than 50,000 gallons of gasoline per month and is owned by an independent small business marketer of gasoline; or~~
 - (iv) ~~Dispenses gasoline for only fueling aircraft, marine vessels, or, at an automobile or light-duty truck assembly plant, motor vehicles that are fitted with an onboard vapor recovery system.~~
- 4. ~~The requirements of this rule do not apply to any storage tank and associated equipment used solely for the storage and dispensing of E-85.~~
- (c) If your GDF has a monthly throughput of 10,000 gallons of gasoline or more and is located in Anderson, Blount, Carter, Cheatham, Davidson, Dickson, Fayette, Hamilton, Hawkins, Haywood, Jefferson, Knox, Loudon, Marion, Meigs, Montgomery, Putnam, Robertson, Rutherford, Sevier, Shelby, Sullivan, Sumner, Tipton, Unicoi, Union, Washington, Williamson, or Wilson Counties, you must comply with the requirements in 40 CFR § 63.11118.
- (d) For any GDF otherwise exempt from subparagraph (c) of this paragraph based on monthly throughput, if the GDF exceeds the applicability threshold specified in subparagraph (c) of this paragraph, it shall be subject to the requirements of subparagraph (c) of this paragraph even if its throughput later falls below the threshold. The owner or operator shall inform the Technical Secretary within 30 days following the exceedance.
- (2) For the purpose of this rule, the following definitions apply: Stage II vapor recovery requirements for GDF in Davidson, Rutherford, Sumner, Williamson, and Wilson counties.
 - (a) "Independent small business marketer of gasoline" means a person engaged in the marketing of gasoline who would be required to pay for procurement and installation of vapor recovery equipment, unless such person satisfies either of the following:
 - 1. ~~With respect to refining:~~
 - (i) ~~Is a refiner; or~~
 - (ii) ~~Controls, is controlled by, or is under common control with, a refiner; or~~
 - (iii) ~~Is otherwise directly or indirectly affiliated with a refiner or with a person who controls, is controlled by, or is under a common control with a refiner (unless the sole affiliation referred to herein is by means of a supply contract or an agreement or contract to use a trademark, trade name, service mark, or other identifying symbol or name owned by such refiner or any such person); or~~
 - 2. ~~Receives less than 50 percent of his annual income from refining or marketing of gasoline.~~

~~For the purpose of this definition, the term "refiner" shall not include any refiner whose total refinery capacity (including the refinery capacity of any person who controls, is controlled by, or is under common control with, such refiner) does not exceed 65,000 barrels per day. For purposes of this definition, "control" of a corporation means ownership of more than 50 percent of its stock. Verification of satisfaction of criteria specified in this definition shall be by notarized certification to the Technical Secretary, unless additional verification is requested by the Technical Secretary, in which case this additional verification shall be furnished to the Technical Secretary immediately. This paragraph applies only to GDF located in Davidson, Rutherford, Sumner, Williamson, and Wilson counties~~

- ~~(b) Any GDF with an existing Stage II vapor recovery system shall decommission and remove the system no later than three years after the effective date of this rule and no GDF shall install a Stage II vapor recovery system on or after such date.~~
- ~~(c) On and after the effective date of this rule, no GDF shall be required to install a Stage II vapor recovery system and a GDF may decommission and remove the GDF's existing Stage II vapor recovery system.~~
- ~~(d) Any GDF that decommissions and removes a Stage II vapor recovery system shall conduct the decommissioning and removal in accordance with Petroleum Equipment Institute (PEI) guidance, "Recommended Practices for Installation and Testing of Vapor Recovery Systems at Vehicle Fueling Sites, PEI/RP300-09" for removal, notification, and certification.~~
- ~~(e) Any GDF that has a Stage II vapor recovery system must comply with all applicable provisions of subparagraph (f) of this paragraph until the system is decommissioned and removed.~~
- ~~(f) Stage II vapor recovery.~~

1. Definitions.

- ~~(b)(i)~~ "Vacuum assist system" means the gasoline vapor recovery system that employs a vacuum generating device to effect transfer of gasoline vapor displaced in fueling a vehicle tank to a gasoline storage tank, vapor storage tank, or vapor processing unit.
- ~~(c)(ii)~~ "Motor vehicle" means any self-propelled vehicle used to carry people or property on a street or highway.
- ~~(d)(iii)~~ "Storage tank or storage vessel" means any stationary tank, reservoir or container used for the storage of a volatile organic liquid.
- ~~(e)(iv)~~ "Volatile organic liquid" means any substance which is liquid at storage conditions and which contains volatile organic compounds.

~~(3) Standards as follow apply:~~

- ~~(a) Standards (Stage I Vapor Recovery) for Gasoline Storage Vessels The owner or operator of each gasoline dispensing facility subject to this rule shall comply with the following requirements:~~
 - ~~1. All gasoline storage vessels at gasoline dispensing facilities shall be loaded by submerged fill;~~
 - ~~2. All vapor lines on the storage vessel shall be equipped with closures that automatically seal upon disconnect;~~
 - ~~3. All gasoline storage vessels at gasoline dispensing facilities shall be served by a vapor recovery system approved by the Technical Secretary, or of a type certified by the California Air Resources Board, and designed, installed, and maintained to recover gasoline vapors displaced during transfer of gasoline from a tank truck to a storage tank;~~

Stage I gasoline vapor recovery systems used for this purpose shall be properly certified under the CARB enhanced vapor recovery (EVR) certification procedures effective on or after April 1, 2001, or shall be listed under the following pre-EVR CARB Executive Orders; mixing of components certified under separate CARB certification procedures will not be allowed:

Number	(Pre EVR) Vapor Recovery Certification Phase I (Stage I) Executive Orders Description	Date
G-70-97-A	Stage I Vapor Recovery Systems for Underground Gasoline Tanks at Service Stations	12/9/85
G-70-102-A	Certification of a Phase I Vapor Recovery System for Aboveground Storage Tanks with less than 40,000 Gallons Capacity for Gasoline or Gasoline/Methanol Blended Fuels	5/25/93

4. ~~If a gauging well separate from the fill tube is used for manual measurement, it shall be provided with a submerged drop tube that extends to within 150 mm (5.9 in) of the gasoline storage vessel bottom; and~~
5. ~~Liquid fill connections for all systems shall be equipped with vapor tight caps.~~
- (b) ~~Standards (Stage I Vapor Recovery) for Gasoline Transfers from Tank Trucks to Storage Vessels~~
~~The owner or operator of a gasoline tank truck shall not unload gasoline to a gasoline storage vessel subject to vapor tightness requirements during unloading unless the following conditions are met:~~
 1. ~~All hoses, adaptors, and couplers in the vapor balance system are properly connected;~~
 2. ~~All vapor return hoses, couplers, and adapters used in the gasoline delivery are vapor tight;~~
 3. ~~All vapor return equipment is compatible with the vapor balance equipment installed on the gasoline dispensing facility storage vessel;~~
 4. ~~All hatches on the gasoline tank truck are kept closed and securely fastened; and~~
 5. ~~The filling of storage vessels at gasoline dispensing facilities is limited to unloading by vapor-tight gasoline tank trucks.~~
- (c) 2. ~~Standards (Stage II Vapor Recovery) for Gasoline Storage Vessels and Dispensing Equipment~~ ~~The owner or operator of each gasoline dispensing facility GDF subject to this rule subparagraph shall comply with the following requirements:~~
 1. (i) ~~All gasoline dispensing shall be by equipment served by a The Stage II vapor recovery system must be approved by the Technical Secretary; certified by the California Air Resources Board, and designed, installed, operated, and maintained to recover gasoline vapors displaced during dispensing to motor vehicle fuel tanks, and accessible for inspection and testing;~~
 2. (ii) ~~The Stage II vapor recovery system shall include for any dispenser and system the following:~~
 - (i)(1) ~~Vapor-tight coaxial hose to conduct vapors captured during dispensing, except on new vehicle fueling lines at motor vehicle assembly plants where vapor-tight dual hose on vacuum assist systems may be employed in lieu of vapor-tight coaxial hose;~~

- ~~(ii)~~(II) For balance systems:
 - ~~(i)~~ I. Installation of piping between the dispenser and the vapor collection tank which precludes liquid blockage in the piping; and
 - ~~(ii)~~ II. No device which inhibits immediate testing for dynamic backpressure;
 - ~~(iii)~~(III) For vacuum assist systems, sufficient vacuum to prevent escape of gasoline vapors during dispensing;
 - ~~(iv)~~(IV) Vapor-tight piping, fittings, caps, couplers, and adapters; and
 - ~~(v)~~(V) Maintenance of vapor tightness throughout the vapor recovery system, except during facility storage tank loading, gauging, and sampling and during maintenance and testing necessitating disruption in the integrity of the system.
- 3.~~(iii)~~ Use of any aftermarket or rebuilt parts is restricted to parts approved by the California Air Resources Board.
- 4.~~(iv)~~ Gasoline shall not be dispensed from a dispensing unit served by or permitted to be served by a component which does not satisfy the following:
- ~~(i)~~(I) Each component required for operation of the system is in place and, to the extent it can be confirmed by sensory inspection, is unimpaired and operational;
 - ~~(ii)~~(II) Each nozzle boot is not torn in either of the following manners:
 - ~~(i)~~ I. Triangular - shaped or similar tear 1/2 inch or more to a side, or hole 1/2 inch or more in length; or
 - ~~(ii)~~ II. Slit 1 inch or more in length.
 - ~~(iii)~~(III) Each faceplate or flexible cone is not damaged in the following manner:
 - ~~(i)~~ I. For balance nozzles and nozzles for aspirator and eductor assist type systems, damage such that the capability to achieve a seal with a fillpipe interface is diminished for an accumulated total of 1/4 of the circumference of the faceplate; or
 - ~~(ii)~~ II. For nozzles for vacuum assist systems, more than 1/4 of the flexible cone is missing;
 - ~~(iv)~~(IV) Each nozzle shutoff mechanism is operational;
 - ~~(v)~~(V) Each vacuum producing unit is operational;
 - ~~(vi)~~(VI) Each vapor processing unit is operational;
 - ~~(vii)~~(VII) Each fitting, cap, coupler, and adapter is vapor-tight; and
 - ~~(viii)~~(VIII) Each pressure/vacuum relief valve, vapor check valve, and dry break is operational.
- 5.~~(v)~~ The owner or operator shall conspicuously display fueling instructions and information in the gasoline dispensing area. These instructions and this information shall describe to customers clearly the proper procedure to be used

for fueling vehicles from the dispenser. These instructions and this information shall include instruction about the proper method of reporting system defects first to facility management, and, then if defects are not corrected, to the Technical Secretary. The notice of the method of reporting to the Technical Secretary shall be displayed no earlier than 3 months after and no later than 6 months after the display of the other instructions and information listed above.

(4)3. Test methods as follow apply:

- (a) ~~Unless otherwise specified in this rule, the test method found in Rule 85 of this chapter to determine compliance with the vapor-tight requirements of Paragraph (3) of this rule for lines, piping, caps, couplers, adapters, and fittings;~~
- (b)(i) The test methods found in Appendix J, Technical Guidance - Stage II Vapor Recovery Systems for Control of Vehicle Refueling Emissions at Gasoline Dispensing Facilities, Volume II, EPA - 450/3-91-022b (November 1991), to determine compliance with applicable requirements specified in Subparagraph (3)(c) part (2)(f)2 of this rule; and/or
- (c)(ii) Other methods necessary for demonstration of compliance approved by the Technical Secretary and the EPA.

(5) ~~Notification, Recordkeeping and Reporting requirements~~

- (a)4. ~~Notification requirements - Each apply as follows: 1. Initial Compliance Certifications - The owner or operator of any facility containing sources subject to this rule shall comply with the requirements in Paragraph 1200-03-18-04(1) of this chapter, except that for gasoline dispensing facilities in Anderson, Blount, Carter, Cheatham, Dickson, Fayette, Hamilton, Hawkins, Haywood, Jefferson, Knox, Loudon, Marion, Meigs, Montgomery, Putnam, Robertson, Sevier, Shelby, Sullivan, Tipton, Unicoi, Union, and Washington Counties that are existing sources on December 29, 2004, the initial compliance certifications shall be submitted by May 1, 2006, instead of the date specified in Paragraph 1200-03-18-04(1). subparagraph 2. Testing Notification - The owner or operator of any facility containing sources subject to this rule shall provide the Technical Secretary written notice of any compliance demonstration testing. This notice shall be provided to the Technical Secretary such that the Technical Secretary is informed of the proposed testing at least 14 days before the proposed date of testing, thereby providing the Technical Secretary opportunity to observe the testing.~~

3. ~~Threshold exceedance notification~~

- (i) ~~The owner or operator of any gasoline dispensing facility that, for the first time dispenses 10,000 gallons of gasoline or more in any calendar month and is no longer subject only to the provisions of Parts (3)(a)1 and (5)(b)2 of this rule, shall inform the Technical Secretary within 30 days.~~
- (ii) ~~The owner or operator of any gasoline dispensing facility that, for the first time dispenses 50,000 gallons of gasoline or more in any calendar month and is no longer exempt from the requirements of Subparagraph (3)(c) of this rule, shall inform the Technical Secretary within 30 days.~~

- (b)5. ~~Recordkeeping requirements - apply as follows: 1. Each owner or operator of any facility containing sources subject to provisions of this rule subparagraph shall, comply with the recordkeeping requirements of this rule. Except except as otherwise specified in this chapter, these records will be maintained for a minimum of 3 years and shall be made available to the Technical Secretary upon request. 2. If any exemption based upon the quantity of gasoline dispensed is claimed for a facility subject to this rule, the owner or operator of the facility shall maintain records showing the quantity of gasoline dispensed each month at the facility. 3. Required required permits and required logs of maintenance shall be kept at the facility for which the permits are issued and the logs~~

created for a minimum of 3 years. Such records shall be made available to the Technical Secretary upon request.

~~(c) Reporting requirements apply as follows:~~

~~4.6 Excess Emissions Report - The owner or operator of any facility containing sources subject to this rule subparagraph shall comply with the requirements in Paragraph paragraph (2) of Rule 1200-03-18-.04(2) of this chapter.~~

~~(6)7. Compliance Demonstration Testing - The owner or operator of any facility containing sources subject to the provisions of Subparagraph (3)(c) of this rule subparagraph shall:~~

~~(a) No later than the applicable date specified in Paragraph (7) of this rule, demonstrate compliance (for the complete system) with the provisions of Subparagraph (3)(c) of this rule, according to the applicable test methods specified in Paragraph (4) of this rule;~~

~~(b)(i) Within 30 days following the occurrence of an incident which could reasonably be expected to have adversely affected the performance of the system, such as excavation near system piping or following replacement of the system, perform applicable testing to demonstrate compliance is maintained; and~~

~~(c)(ii) Within 5 years following any compliance demonstration for the complete system, demonstrate the system maintains compliance.~~

~~(7) Initial Compliance Dates~~

~~(a) For facilities subject to Subparagraph 1200-03-18-.24(3)(c) of this rule, and owned by an independent small business marketer of gasoline:~~

~~1. No less than one-third of these facilities shall have achieved compliance by June 21, 1994;~~

~~2. No less than two-thirds of these facilities shall have achieved compliance by June 21, 1995;~~

~~3. All facilities shall have achieved compliance by June 21, 1996; and~~

~~4. By June 21, 1994, the independent small business marketer shall designate in writing to the Technical Secretary which facilities will achieve compliance by the respective dates of Parts 1, 2, and 3 of this subparagraph.~~

~~(b) For facilities subject to Subparagraph 1200-03-18-.24(3)(c) of this rule, and not owned by an independent small business marketer of gasoline:~~

~~1. For which construction commenced after November 15, 1990, compliance shall be achieved by December 21, 1993;~~

~~2. Which dispense at least 100,000 gallons of gasoline per month, based on average monthly sales for the 2-year period before June 21, 1993, and for which construction commenced before November 15, 1990, compliance shall be achieved by June 21, 1994, and~~

~~3. Not accounted for in Parts 1 and 2 of this subparagraph, compliance shall be achieved by June 21, 1995.~~

~~(c) Gasoline dispensing facilities in Anderson, Blount, Carter, Cheatham, Dickson, Fayette, Hamilton, Hawkins, Haywood, Jefferson, Knox, Loudon, Marion, Meigs, Montgomery, Putnam, Robertson, Sevier, Sullivan, Tipton, Unicoi, Union, and Washington Counties that are existing sources on December 29, 2004 shall have achieved compliance by May 1, 2006.~~

* If a roll-call vote was necessary, the vote by the Agency on these rulemaking hearing rules was as follows:

Board Member	Aye	No	Abstain	Absent	Signature (if required)
Dr. John Benitez Licensed Physician with experience in health effects of air pollutants				X	
Karen Cisler Environmental Interests	X				
Dr. Wayne T. Davis Conservation Interests	X				
Stephen Gossett Working for Industry with technical experience	X				
Dr. Shawn A. Hawkins Working in field related to Agriculture or Conservation	X				
Richard Holland Working for Industry with technical experience	X				
L. Shawn Lindsey Working in Municipal Government				X	
Dr. Tricia Metts Involved with Institution of Higher Learning on air pollution evaluation and control	X				
Chris Moore Working in management in Private Manufacturing	X				
John Roberts Small Generator of Air Pollution representing Automotive Interests	X				
Amy Spann Registered Professional Engineer	X				
David Owenby Commissioner's Designee, Dept. of Environment and Conservation	X				
Larry Waters County Mayor	X				
Jimmy West Commissioner's Designee, Dept. of Economic and Community Development				X	

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Air Pollution Control Board on 11/12/2015, and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 07/02/15

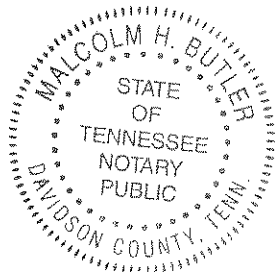
Rulemaking Hearing(s) Conducted on: (add more dates). 08/31/15

Date: 11-16-2015

Signature: *Barry R. Stephens*

Name of Officer: Barry R. Stephens, P.E.

Title of Officer: Technical Secretary



Subscribed and sworn to before me on: 11-16-2015

Notary Public Signature: *Malcolm H. Butler*

My commission expires on: 1-11-2017

All rulemaking hearing rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.

Herbert H. Slatery III

Herbert H. Slatery III
Attorney General and Reporter

4/11/2016

Date

Department of State Use Only

Filed with the Department of State on: 4/15/16

Effective on: 7/14/16

Tre Hargett

Tre Hargett
Secretary of State

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G.O.C. STAFF RULE ABSTRACT

AGENCY: State Board of Equalization

SUBJECT: Subsidized Affordable Housing

STATUTORY AUTHORITY: Tennessee Code Annotated, Sections 4-3-5103 and 67-1-305.

EFFECTIVE DATES: July 20, 2016 through June 30, 2017

FISCAL IMPACT: None

STAFF RULE ABSTRACT: The rulemaking hearing rules establish specific methods of property tax valuation for the following three categories of property:

1. Low-income housing tax credit (LIHTC) property;
2. Rural rental housing property; and
3. Section 1602 affordable housing.

Agency Response to Public Hearing Comments

The agency response to comments received at public hearings concerning the rules is as follows:

Comments received at rule-making hearing on 11/6/15

Craig Cardella, Valdosta GA. Mr. Cardella presented slides criticizing the concept of attributing value to federal incentives that do not add annual operating income to affordable housing properties. He proposed that taxable value instead reflect an income approach to value utilizing audited financial reports for the property as filed for government program compliance purposes. Response: audited financial reports for a property reflect actual rent and other income, but no attribution of value to economic benefits to the owner represented by the subsidy. Tennessee case law requires that value for property tax purposes include the subsidy. *Spring Hill LP v. TN State Board of Equalization*, 2003 WL 23099679 (TN Court of Appeals 12/31/2003).

Don Harris & Tim Chandler, USDA Rural Development. These witnesses offered the assistance of their offices in cataloging the impact of higher property taxes on affordable housing operations, including the 'trickle down' impact on needy tenants who would suffer from higher rents or deferred maintenance that have resulted from larger-than-anticipated property taxes on affordable housing properties. Response: Tennessee law does not presently grant a right to a property tax reduction in the circumstances claimed, but allows counties in their discretion to qualify these properties as part of a local property tax relief program for housing or economic development purposes.

Amy Broadwater, Rueben Brown CPA Firm. Ms. Broadwater, whose firm represents affordable housing owners, echoed concerns about the impact of higher property taxes on rent payable by needy tenants. She suggested that at a minimum, the proposed rules should 'smooth' the value attributed to tax credits over the full 30 years that rent restrictions typically remain in place. Response: Tennessee law does not presently grant a right to a property tax reduction in the circumstances claimed, but allows counties in their discretion to qualify these properties as part of a local property tax relief program for housing or economic development purposes. The final adopted version of the rules adopts a longer (15 year) 'smoothing' period for attributing value to tax credits.

David Kleinfelter, Reno & Cavanah, PLLC presented and summarized written comments submitted by a colleague, Dwayne Barrett. He stated his belief that, apart from other considerations, the higher taxable values could subject the rules to a legal challenge based on disparate impact on needy tenants. Response: Tennessee law does not presently grant a right to a property tax reduction in the circumstances claimed, but allows counties in their discretion to qualify these properties as part of a local property tax relief program for housing or economic development purposes.

Matt Scanlon, Gullett Sanford Robinson & Martin, supported Mr. Cardella's comments regarding the perverse (property tax) effect of turning a federal housing incentive into a negative factor in the operating viability of the housing properties and the low-income tenants that were supposed to benefit from the incentive. Response: Tennessee law does not presently grant a right to a property tax reduction in the circumstances claimed, but allows counties in their discretion to qualify these properties as part of a local property tax relief program for housing or economic development purposes.

Alvin Nance, CEO of housing developer Lawler Wood LLC of Knoxville, argued generally against the concept of assigning value to the subsidy, and objected particularly to distributing subsidy value over the shorter period of availability of the tax credits. He pointed instead to the 30 year period of program rent restrictions. Response: Tennessee case law requires that value for property tax purposes include the subsidy. *Spring Hill LP v. TN State Board of Equalization*, 2003 WL 23099679 (TN Court of Appeals 12/31/2003). The final adopted version of the rules adopts a longer (15 year) 'smoothing' period for attributing value to tax credits.

Craig McMurtry of Gateway Properties suggested the Board weigh the positive economic impact to communities of affordable housing as balanced against possible diminution in property tax revenues if subsidies were not assigned a real property value. Response: Tennessee law does not presently grant a right to a property tax reduction in the circumstances claimed, but allows counties in their discretion to qualify these properties as part of a local property tax relief program for housing or economic development purposes.

Tab Burkhalter, Jr. of Maryville offered objections to the rules similar to prior witnesses. He also stated that if counties could be relieved of the revenue burden of myriad other property tax exemptions they would be

positioned to accept fair values for subsidized affordable housing. He also stated that needy tenants in affordable housing should qualify for property tax relief and tax freeze programs available to residential property owners. Response: Tennessee law does not presently grant a right to a property tax reduction in the circumstances claimed, but allows counties in their discretion to qualify these properties as part of a local property tax relief program for housing or economic development purposes.

Randy Button of Nashville spoke in support of the alternate value proposal described in Mr. Cardella's written filing (limit value to income approach using audited financial statements and no attribution of value to subsidies. Response: Tennessee law does not presently grant a right to a property tax reduction in the circumstances claimed, but allows counties in their discretion to qualify these properties as part of a local property tax relief program for housing or economic development purposes.

Additional comments received subsequent to 11/6/15 public hearing

Thomas Amdur, TN Developers Council, wrote generally against the concept of assigning value to the subsidy, and objected particularly to distributing subsidy value over the shorter period of availability of the tax credits. He pointed instead to the 30 year period of program rent restrictions. Response: Tennessee case law requires that value for property tax purposes include the subsidy. *Spring Hill LP v. TN State Board of Equalization*, 2003 WL 23099679 (TN Court of Appeals 12/31/2003). The final adopted version of the rules adopts a longer (15 year) 'smoothing' period for attributing value to tax credits.

David Kleinfelter, Reno & Cavanah, PLLC wrote reiterating his oral testimony, above, and complaining the Board had offered no examples of its approved value method for §1602 properties. He complained the attribution rule for tax credit properties overstated value, and suggested instead the method simply include as taxable value the actual credit allowed for the tax year at issue. Response: The approved value method for §1602 properties is referenced in the Board's decision and record in the Sevierville Apartments appeal. The approved value method for tax credit properties is referenced in the Spring Hill appeal.

Jay Catignani, a registered taxpayer agent who has represented subsidized housing owners in appeals, supported the proposed rules as "long overdue". Response: The agency agrees.

Ralph Perrey, Executive Director of the TN Housing Development Agency (THDA) expressed concern that present methods for valuing tax credit housing were at odds with the federal incentive for these programs, but he lauded the effort to achieve predictability and requested a minimum fifteen year 'smoothing' period for attributing value to the credits. Response: The final adopted version of the rules adopts a longer (15 year) 'smoothing' period for attributing value to tax credits.

Will Denami on behalf of the TN Assessors Association urged the Board to defer the issue to the legislature. Response: The agency will amend or repeal its rules if the legislature mandates a different approach.

Robert Lee, an attorney representing assessors in appeals involving subsidized housing, complained the rules would 'guf' the cost approach to value as well as the appraisal concept of highest and best use. Response: the agency believes the rule would not apply if the highest and best use of a particular property is shown to be other than subsidized multi-family housing. The agency believes the cost approach to value has seldom if ever been relied upon by any party where value of these properties is at issue, nevertheless the cost approach may be relevant in a particular case to validate components of the income approach reflected in the proposed rules.

Regulatory Flexibility Addendum

Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rule making process as described in T.C.A. § 4-5-202(a)(3) and T.C.A. § 4-5-202(a), all agencies shall conduct a review of whether a proposed rule or rule affects small businesses.

Tennessee law requires generally that property be assessed for ad valorem tax purposes at its fair market value, ascertained in accordance with official assessment manuals promulgated by the state Division of Property Assessments (Comptroller of the Treasury) and approved by the State Board of Equalization. TCA 67-5-601. Unfortunately no statute or rule defines specific methods for the properties defined in these rules, with the result that a different approach to value may be employed in one county versus another.

The proposed rules establish specific methods of property tax valuation for the following three categories of property:

- (1) "Low-income housing tax credit (LIHTC) property" defined as low-income housing property restricted under government regulations pursuant to § 42 of the Internal Revenue Code of 1986, codified in 26 U.S.C. § 42, the low-income housing tax credit program;
- (2) "Rural rental housing property" defined as property financed or refinanced by a loan made, insured, or guaranteed by a branch, department or agency of the United States government under § 515 of the Housing Act of 1949, codified in 42 U.S.C. § 1485, the rural rental housing program;
- (3) "Section 1602 affordable housing" defined as low-income housing property restricted under government regulations pursuant to § 42 of the Internal Revenue Code of 1986, codified in 26 U.S.C. § 42, but for which credits have been surrendered in return for a loan as authorized by § 1602 of the American Reinvestment and Recovery Act of 2009;

The methods established in the rules substantially restate value concepts that have been approved in contested property tax appeals. Owners of these properties will be affected by these rules in the following respects:

1. All owners will benefit from the certainty that the value of their property will be governed by specific methods required in every county.
2. Owners of tax credit property will benefit from the opportunity to elect an averaged attribution of value to their subsidy over the restricted rent compliance period (typically fifteen years), rather than 'front-loaded' attribution in some counties that results in early year values that exceed conventional (non-subsidized) housing properties that are comparable in all other respects and located in the same county.

Based on the foregoing findings the agency concludes the rules will generally benefit the small businesses that own and operate subsidized (restricted rent) multi-family housing.

Impact on Local Governments

Pursuant to T.C.A. §§ 4-5-220 and 4-5-228 "any rule proposed to be promulgated shall state in a simple declarative sentence, without additional comments on the merits of the policy of the rules or regulation, whether the rule or regulation may have a projected impact on local governments." (See Public Chapter Number 1070 (<http://state.tn.us/sos/acts/106/pub/pc1070.pdf>) of the 2010 Session of the General Assembly)

The proposed rules should ultimately have no fiscal impact on local governments. The property tax value methods specified in the rules are derived from the results previously determined in contested appeals, and the 'smoothing' option permitted in the rules will simply spread the tax impact of the approved method evenly over fifteen years as opposed to a declining attribution that yields higher values in early years and lower values in later years of the property's restricted rent compliance period.

Additional Information Required by Joint Government Operations Committee

All agencies, upon filing a rule, must also submit the following pursuant to T.C.A. § 4-5-226(i)(1).

- (A) A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

The proposed rules establish specific methods of property tax valuation for three categories of subsidized multi-family housing property.

- (B) A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

T.C.A. §§ 4-3-5103 and 67-1-305 authorize promulgation of the rules.

- (C) Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

Most directly affected are owners of the specified multi-family housing, most of whom urged changes in the rules. A spokesman for local assessors of property urged a legislative solution versus rules.

- (D) Identification of any opinions of the attorney general and reporter or any judicial ruling that directly relates to the rule;

Spring Hill LP v. TN State Board of Equalization, 2003 WL 23099679 (TN Court of Appeals 12/31/2003).

- (E) An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency's annual budget or five hundred thousand dollars (\$500,000), whichever is less;

None.

- (F) Identification of the appropriate agency representative or representatives, possessing substantial knowledge and understanding of the rule;

Kelsie Jones, State Board of Equalization (312 Rosa L Parks Ave., Ste. 900, Nashville, TN 37243-1102; 615-747-5379; kelsie.jones@cot.tn.gov); Stephanie Maxwell, Office of Comptroller General Counsel (505 Deaderick St., Ste. 1700, Nashville, TN 37243-1402; 615-401-7964; stephanie.maxwell@cot.tn.gov)

- (G) Identification of the appropriate agency representative or representatives who will explain the rule at a scheduled meeting of the committees;

Same as above.

- (H) Office address, telephone number, and email address of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

See above.

- (I) Any additional information relevant to the rule proposed for continuation that the committee requests.

Will be provided on request.

**Department of State
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Email: publications.information@tn.gov

For Department of State Use Only

Sequence Number: 04-14-16
Rule ID(s): 6182
File Date: 4/21/16
Effective Date: 7/20/16

Rulemaking Hearing Rule(s) Filing Form

Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing (Tenn. Code Ann. § 4-5-205).

Pursuant to Tenn. Code Ann. § 4-5-229, any new fee or fee increase promulgated by state agency rule shall take effect on July 1, following the expiration of the ninety (90) day period as provided in § 4-5-207. This section shall not apply to rules that implement new fees or fee increases that are promulgated as emergency rules pursuant to § 4-5-208(a) and to subsequent rules that make permanent such emergency rules, as amended during the rulemaking process. In addition, this section shall not apply to state agencies that did not, during the preceding two (2) fiscal years, collect fees in an amount sufficient to pay the cost of operating the board, commission or entity in accordance with § 4-29-121(b).

Agency/Board/Commission:	State Board of Equalization
Division:	
Contact Person:	Kelsie Jones, Executive Secretary
Address:	312 Rosa L Parks Ave., Ste. 900, Nashville, TN
Zip:	37243-1102
Phone:	615-401-7883
Email:	kelsie.jones@cot.tn.gov

Revision Type (check all that apply):

☐ Amendment
☒ New
☐ Repeal

Rule(s) Revised (ALL chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please enter only **ONE** Rule Number/Rule Title per row)

Chapter Number	Chapter Title
0600-10	Subsidized Affordable Housing
Rule Number	Rule Title
0600-10-.01	Purpose
0600-10-.02	Definitions
0600-10-.03	Determining Value for LIHTC Property
0600-10-.04	Determining Value for Rural Rental Housing Property
0600-10-.05	Determining Value for Section 1602 Affordable Housing
0600-10-.06	Implementation
0600-10-.07	Effective date

Substance of proposed rules:

Chapter 0600-10
Subsidized Affordable Housing

0600-10-.01 Purpose

The purpose of these rules is to define the value of subsidized affordable housing for property taxes in a manner that is certain and predictable, that furthers the federal incentives to assure a reasonable affordable housing supply, and that comports with state constitutional standards for ad valorem taxation.

Authority: T.C.A. §§ 4-3-5103 and 67-1-305.

0600-10-.02 Definitions

As used in these rules, unless the context otherwise requires:

- (1) "Low-income housing tax credit (LIHTC) property" means low-income housing property restricted under government regulations pursuant to § 42 of the Internal Revenue Code of 1986, codified in 26 U.S.C. § 42, the low-income housing tax credit program;
- (2) "Rural rental housing property" means property financed or refinanced by a loan made, insured, or guaranteed by a branch, department, or agency of the United States government under § 515 of the Housing Act of 1949, codified in 42 U.S.C. § 1485, the rural rental housing program;
- (3) "Section 1602 affordable housing" means low-income housing property restricted under government regulations pursuant to § 42 of the Internal Revenue Code of 1986, codified in 26 U.S.C. § 42, but for which credits have been surrendered in return for a loan, as authorized by § 1602 of the American Reinvestment and Recovery Act of 2009;
- (4) "Subsidized affordable housing" means property participating in federal programs to incentivize private housing investment in return for rent concessions to needy tenants. These programs include, but are not limited to, those authorized under the § 515 Rural Rental Housing program, § 42 of the Internal Revenue Code of 1986, or § 1602 of the American Reinvestment and Recovery Act of 2009; and
- (5) "Taxpayer" means any owner of property subject to taxation or any party liable for property taxes.

Authority: T.C.A. §§ 4-3-5103 and 67-1-305.

0600-10-.03 Determining Value for LIHTC Property

- (1) The taxable value of LIHTC property shall consist of a restricted use component and a component representing the economic benefit of the subsidy to the property owners.
- (2) The restricted use component shall be the income approach value resulting from using actual rents paid or payable by needy tenants and by such factors for vacancy, collection loss, expenses, reserves, and capitalization rates as are typically experienced by comparable properties in the area in which the property is located or economically comparable areas.
- (3) With regard to the value of the subsidy component, a taxpayer of low-income housing tax credit property shall elect to either:
 - a. Have the assessor include in the assessor's annual appraisal the present value of all future tax credits for each of the unused tax credit years remaining on the property; or
 - b. Have the assessor include in the assessor's annual appraisal, instead of the present value of all future tax credits, the average annual present value of the credit as calculated in (3)(a) above, based on the Compliance Period provided for in the Land Use Restriction Agreement for the particular property being valued.

Authority: T.C.A. §§ 4-3-5103 and 67-1-305.

0600-10-.04 Determining Value for Section 515 Rural Rental Housing Property

- (1) The taxable value of rural rental housing property shall be calculated by the income approach value resulting from using actual rents paid or payable by needy tenants plus the loan subsidy income attributed to the property for the year at issue. Additional income approach factors for vacancy, collection loss, expenses, reserves, and capitalization rates shall be based on those typically experienced by comparable properties in the area in which the property is located or economically comparable areas.
- (2) The loan subsidy income attributed to the property shall be the difference between actual loan amortization and a typical market loan amortization for the year at issue.

Authority: T.C.A. §§ 4-3-5103 and 67-1-305.

0600-10-.05 Determining Value for Section 1602 Affordable Housing

- (1) The taxable value of §1602 affordable housing property shall be calculated by the income approach value resulting from using actual rents paid or payable by needy tenants plus the forgivable loan income attributed to the property for the year at issue. Additional income approach factors for vacancy, collection loss, expenses, reserves, and capitalization rates shall be based on those typically experienced by comparable properties in the area in which the property is located or economically comparable areas.
- (2) The forgivable loan income attributed to the property shall be the amount of loan principal forgiven for the year at issue.

Authority: T.C.A. §§ 4-3-5103 and 67-1-305.

0600-10-.06 Implementation

- (1) The assessor shall implement the value methods required by these rules as of January 1. For each LIHTC property, the taxpayer shall notify the assessor of the taxpayer's election pursuant to rule 0600-10-.03(3) and provide documentation necessary to permit the assessor to apply the method elected. If a taxpayer for a LIHTC property fails to notify the assessor of the taxpayer's election hereunder, the assessor shall choose one of the valuation methods provided in rule 0600-10-.03(3) and apply that method for each year until the particular property's subsidy is exhausted. The assessor shall update the subsidy component of a LIHTC property assessment as appropriate to the alternate method as provided in these rules. The assessor shall update the restricted-use component of a LIHTC property assessment on the occasion of any county-wide reappraisal, or upon being directed by the county or state board of equalization to update the valuation for a year in which the assessment is properly appealed.
- (2) The taxpayer shall be bound by the method it elected under rule 0600-10-.03(3) for each year until the subsidy is exhausted. Existing properties in operation on the effective date of these rules shall be valued by the method elected by the taxpayer under rule 0600-10-.03(3) for the remaining period of the subsidy.

Authority: T.C.A. §§ 4-3-5103 and 67-1-305.

0600-10-.07 Effective date

After this chapter takes effect, these rules shall apply to the tax period beginning January 1, 2016 and all subsequent tax periods.

Authority: T.C.A. §§ 4-3-5103 and 67-1-305.

* If a roll-call vote was necessary, the vote by the Agency on these rulemaking hearing rules was as follows:

Board Member	Aye	No	Abstain	Absent
Bennett	X			
Burchett	X			
Hargett				X
Lillard	X			
Roberts	X			
Tarwater	X			
Wilson	X			

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the State Board of Equalization on December 15, 1015 and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 09/16/15

Rulemaking Hearing(s) Conducted on: (add more dates). 11/06/15

Date: April 8, 2016

Signature: Kelsie E Jones

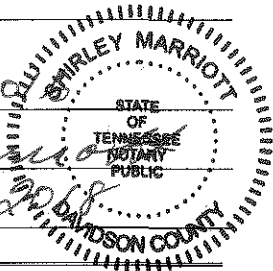
Name of Officer: Kelsie E Jones

Title of Officer: Executive Secretary, SBOE

Subscribed and sworn to before me on: 08 APRIL 2016

Notary Public Signature: Shirley Marriott

My commission expires on: 08 MAY 2018



All rulemaking hearing rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.

Herbert H. Slatery III
Herbert H. Slatery III
Attorney General and Reporter
April 19, 2016
Date

Department of State Use Only

Filed with the Department of State on: 4/21/16

Effective on: 7/20/16



Tre Hargett
Secretary of State